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December 21, 2006

TTAB

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Opposition No. 91165809
Triforest Enterprises, Inc. v. Nalge Nunc International Corporation
Application Serial No. 76/572,253

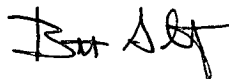
Dear Madam:

Enclosed find the following with respect to the above-referenced matter:

1. Applicant Nalge Nunc International Corporation's Notice of Filing Deposition Transcript of Fredric Edelstein;
2. Deposition Transcript of Fredric Edelstein; and
3. First-Class Mail Certification and postcard.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Brett A. Schatz

BAS:alf

Enclosures

cc: Theodore R. Remaklus, Esq. (w/o Enclosures)
Sarah Otte Graber, Esq. (w/o Enclosures)

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12-26-2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>In re Application, Serial No. 76/572,253</u>)	
TriForest Enterprises, Inc.)	
)	Opposition No. 91165809
Opposer,)	
v.)	
)	
Nalge Nunc International Corporation)	
)	
Applicant-Respondent.)	
_____)	

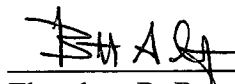
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Alexandria, VA 22313-1451

**APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S
NOTICE OF FILING DEPOSITION TRANSCRIPT
OF FREDRIC EDELSTEIN**

Applicant Nalge Nunc International Corporation hereby submits to the Trademark Trial and Appeal Board a certified copy of the deposition transcript of Fredric Edelstein, pursuant to Trademark Trial and Appeal Board Manual of Procedures, Rule 37 C.F.R. § 2.125. An appropriate copy has previously been served upon Opposer, TriForest Enterprises, Inc.

Respectfully submitted,

Dated: December 21, 2006



Theodore R. Remaklus, Esq.
Brett A. Schatz, Esq.
Sarah Otte Graber, Esq.
WOOD, HERRON & EVANS, L.L.P.
441 Vine Street, 2700 Carew Tower
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(513) 241-2324
Attorneys for Applicant
Nalge Nunc International Corporation

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, P.O. Box, 1451, Alexandria, VA 22313-1451, on December 21, 2006.

A handwritten signature in cursive script, reading "Anita L. Freeman", is written over a horizontal line.

Anita L. Freeman

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S NOTICE OF FILING DEPOSITION TRANSCRIPT OF FREDRIC EDELSTEIN** was served by United States Postal Service as First Class Mail, postage prepaid, upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., Law Offices of Clement Cheng, 17220 Newhope Street, Suite 127, Fountain Valley, California 92708, on this 21st day of December, 2006. The deposition transcript of Fredric Edelstein was previously served upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., on September 22, 2006.



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Copy of Transcript

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TRIFOREST ENTERPRISES, INC.,

Opposer,

vs.

NALGE NUNC INTERNATIONAL
CORPORATION,

Applicant-Respondent

Opposition No.: 91165809
Application No.: 76572253
Mark: plastic
Water bottle
(design)

DEPOSITION OF

FREDRIC EDELSTEIN

August 28, 2006
9:30 a.m.

CDI International
525 South 4th Street, Suite 5880
Philadelphia, Pennsylvania

Jessica Haddix, Registered Professional Reporter and Notary Public.



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APPEARANCES:

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Deposition of Fredric Edelstein

August 28, 2006

FREDRIC EDELSTEIN, after having
been first duly sworn, was examined and
testified as follows:

BY MR. SCHATZ:

Q. Could you state your name for the
record?

A. Fredric Edelstein.

Q. Mr. Edelstein, what do you do for
a living?

A. I import and distribute
beverage-ware.

Q. And for what company do you work
for?

A. CDI International.

Q. And exactly what does CDI do?

A. What we do is we design/manufacture
all types of beverage-ware, everything from
ceramic coffee mugs to tumblers -- acrylic
tumblers, steel tumblers and water bottles --
and we distribute this product into a variety
of different markets.

Q. And do you personally buy water
bottles on behalf of CDI?



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1 A. Yes.

2 Q. Why don't you tell me about your
3 background/experience in the bottle industry?

4 A. Specifically the water bottle
5 industry?

6 Q. Sure.

7 A. I guess we started to notice, I
8 would say about five years ago -- actually,
9 the Nalgene product starting to make a
10 statement in the industry. Up until that
11 time it seemed to us that, you know, the
12 bicycle bottle, a very inexpensive bottle, was
13 the bottle that was out there. It sold for
14 99 cents or 79 cents, and then we were
15 amazed to see a water bottle on the market
16 that sold for, in some cases, \$12.99, \$11.99,
17 \$9.99.

18 So, of course, that interested us,
19 because as an importer all of the bike
20 bottles were domestically made, and then to
21 possibly see some room in terms of an import
22 bottle in terms of the retail cost, we
23 started to kind of evaluate the water bottle
24 industry.

25 We started to try to find a



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1 manufacturer in China where we did most of
2 our manufacturing at this point. We found a
3 manufacturer and we started to bring in water
4 bottles, and in the process of doing so, we
5 built a whole line of water bottles that we
6 sell to a variety of different markets.

7 Q. Based on your experience in water
8 bottles, would you consider yourself familiar
9 with your competitors?

10 A. I would think so.

11 Q. Are you familiar with the fact
12 that there are numerous types of aesthetically
13 looking water bottles that are sold?

14 A. Without a doubt. Definitely.

15 Q. You mentioned Nalgene.

16 I take it you're familiar with
17 that company?

18 A. Yes.

19 Q. Do you know Nalgene as a seller of
20 water bottles?

21 A. Yes.

22 Q. Would you say, based on your
23 experience, that Nalgene is a well-recognized
24 seller of water bottles in the retail
25 industry?



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1 A. Yes.

2 Q. And are you aware is Nalgene a
3 national seller of water bottles?

4 A. Yes.

5 Q. So throughout the United States?

6 A. Yes.

7 Q. Would you say that your competitors
8 know of Nalgene as a seller of water bottles?

9 A. Definitely.

10 Q. Would you consider Nalgene's sales
11 of water bottles to be extensive in the
12 retail industry?

13 A. Yes.

14 Q. Would you consider their
15 advertising to be extensive in the retail
16 industry?

17 A. I think in terms of branding their
18 name on the bottle, yes, but other than that,
19 I have not seen advertising for the Nalgene
20 label.

21 Q. So other than that you're just not
22 sure one way or the other?

23 A. Right; that's correct.

24 Q. Are you familiar with what is
25 commonly known as the narrow mouth Nalgene



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1 water bottle?

2 A. Yes.

3 Q. And if I showed you a silhouette
4 of the Nalgene narrow mouth water bottle
5 without any identifying labeling, would you
6 recognize that as a Nalgene bottle?

7 A. I believe so.

8 (Exhibit-16 was marked for
9 identification.)

10 BY MR. SCHATZ:

11 Q. I'm going to pass to you what's
12 been marked in a previous deposition as
13 Exhibit 16.

14 Mr. Edelstein, do you recognize
15 Exhibit 16 as the narrow mouth water bottle
16 that's sold by Nalgene?

17 A. Yes.

18 Q. And based on your experience in
19 the industry, do you mentally associate the
20 figure in Exhibit 16 with Nalgene as a
21 company?

22 A. Yes.

23 Q. Is it your opinion that your
24 customers, that is CDI's direct customers,
25 would also make that mental association?



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1 A. I think most would.

2 (Exhibit-15 was marked for
3 identification.)

4 BY MR. SCHATZ:

5 Q. I'm going to pass to you what's
6 been marked previously as Exhibit 15.

7 If you would look at the bottle to
8 the left of Exhibit 15, would you agree with
9 me that the Nalgene narrow mouth bottle does
10 not look similar to the bottle on the left
11 of Exhibit 15?

12 A. Does not look --

13 Q. Correct.

14 A. -- similar.

15 Q. In other words, do the two bottles
16 that I have referred to, that is the Nalgene
17 bottle and the bottle to the left on Exhibit
18 15, would you agree that they look
19 dissimilar?

20 A. Yes.

21 Q. Is part of that because the bottle
22 to the left of Exhibit 15 has a rounded top
23 cap?

24 A. Yes.

25 Q. Would you agree with me that that



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1 bottle to the left of Exhibit 15 has a
2 tether and a stem but it still looks
3 different than the Nalgene bottle?

4 A. Yes. Correct.

5 Q. Have you ever seen in the
6 marketplace a bottle like that depicted to
7 the left of Exhibit 15?

8 A. Yes.

9 Q. And would you agree with me that
10 that functions as a water bottle?

11 A. Yes.

12 Q. Looking at the bottle in the
13 middle of Exhibit 15, I'm going to ask some
14 very similar questions.

15 Would you agree with me that the
16 bottle to the middle of Exhibit 15 does not
17 look like the Nalgene narrow mouth bottle?

18 A. Correct.

19 Q. Would you agree with me that the
20 tether of the bottle in the middle of Exhibit
21 15 is attached to the cap in a different
22 looking way than Exhibit 16, that is the
23 Nalgene narrow mouth bottle?

24 A. Actually, from the look of it, it
25 looks like it's attached the same way.



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1 Q. Okay. I'm going to show you a
2 different picture down the road.

3 So it is a little bit vague from
4 that picture?

5 A. Yes.

6 Q. How about this: Would you agree
7 with me that the slope of the shoulder --

8 A. Yes.

9 Q. -- is different?

10 A. Yes.

11 Q. Just so I can --

12 A. The bottle itself is different,
13 yes.

14 Q. Just to make it clear for the
15 record, I have to use all these exhibit
16 numbers just so it's clear for the record.

17 A. Okay.

18 Q. So you would say that the slope of
19 the shoulder of the bottle to the middle of
20 Exhibit 15 looks different than Exhibit 16?

21 A. Yes.

22 Q. Have you seen the bottle depicted
23 in the middle of Exhibit 15 in the
24 marketplace?

25 A. Yes.



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1 Q. Does that function as a water
2 bottle?

3 A. Yes.

4 (Exhibit-19 was marked for
5 identification.)

6 BY MR. SCHATZ:

7 Q. I'm going to pass to you what's
8 been marked as Exhibit 19.

9 Are you familiar with Exhibit 19?

10 A. No, I'm not.

11 Q. You have never seen that bottle?

12 A. No.

13 Q. I'll represent to you that that's
14 a bottle that's sold by a company by the
15 name of Triforest out of California.

16 Do you recognize the curvature to
17 the body of the bottle depicted in Exhibit
18 19?

19 A. Yes.

20 Q. What would you say is the purpose
21 of those curves?

22 A. I would say their intended purpose
23 is possibly as a hand grip.

24 Q. Have you seen water bottles that
25 have similar indentation in the body?



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1 A. Yes.

2 Q. And is it your understanding that
3 those are used to make it easier to grip the
4 water bottle?

5 A. Yes.

6 (Exhibit-20 was marked for
7 identification.)

8 BY MR. SCHATZ:

9 Q. Here is Exhibit 20. Actually, let
10 me go back.

11 With respect to Exhibit 19, would
12 you agree with me that Exhibit 19 looks
13 different than the Nalgene narrow mouth
14 bottle?

15 A. Yes.

16 Q. Back to Exhibit 20.

17 Have you ever seen a bottle
18 similar to Exhibit 20?

19 A. Yes, similar, but might not be
20 exact.

21 Q. Okay. Do you recognize with
22 Exhibit 20 that there is a portion toward the
23 lower body that slopes inward?

24 A. Yes.

25 Q. And what do you think a purpose of



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1 that slope is?

2 A. For a car cup holder.

3 Q. So do you think that that slope or
4 that narrowing of the body makes it easier
5 for that bottle to be held in a cup holder?

6 A. Yes.

7 Q. Looking at the shoulder of Exhibit
8 20, how would you compare the slope of the
9 shoulder of the bottle in Exhibit 20 to the
10 Nalgene narrow mouth bottle?

11 A. Completely different.

12 Q. Would you agree with me that
13 Exhibit 20 functions as a water bottle?

14 A. Yes.

15 (Exhibit-22 was marked for
16 identification.)

17 BY MR. SCHATZ:

18 Q. And here is Exhibit 22.

19 Do you believe that Exhibit 22, as
20 well as you can see it from that depiction
21 -- referring to Exhibit 22 -- how would you
22 compare the way that bottle looks to the
23 Nalgene narrow mouth bottle?

24 A. Very different.

25 Q. Tell me why.



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1 A. Well, there is a certainly an
2 indent about half way down, which one would
3 utilize as probably for a cup holder. The
4 shoulder is different. It's more of a right
5 angle. So I would say that in terms of
6 silhouette, it's almost completely different.

7 Q. Would you say that Exhibit 22
8 serves as a water bottle?

9 A. Yes.

10 (Exhibit-23 was marked for
11 identification.)

12 BY MR. SCHATZ:

13 Q. Passing to you what's been marked
14 as Exhibit 23, can you compare the aesthetics
15 of the bottle depicted in Exhibit 23 versus
16 the Nalgene narrow mouth depicted in Exhibit
17 16?

18 A. Completely different.

19 Q. How so?

20 A. Well, Exhibit 23 has an accordion
21 type mechanism, which gives the ability for
22 the bottle to collapse, whereas the Nalgene
23 is a sturdy body and would not collapse.

24 Q. Would you say that Exhibit 23 and
25 Exhibit 16 look different also because of the



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1 slope of the shoulder?

2 A. Yes, and the tether, a little
3 different tether.

4 Q. Would you agree that the base
5 portion of Exhibit 23 looks aesthetically
6 different than Exhibit 16?

7 A. Yes, very much so.

8 (Exhibit-24 was marked for
9 identification.)

10 BY MR. SCHATZ:

11 Q. And the same question for Exhibit
12 24.

13 How would you compare the
14 aesthetics of Exhibit 24 with the Nalgene
15 narrow mouth bottle?

16 A. Again, completely different lid,
17 tether, bottle shape, silhouette: All
18 different.

19 Q. And do you notice in Exhibit 24
20 there are contours to the side of the bottle?

21 A. Yes.

22 Q. Do you have an understanding of
23 what the purpose of those contours is?

24 A. I would say also for easy
25 handling.



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1 Q. Is it your opinion that Exhibit 24
2 would be used as a water bottle?

3 A. Yes.

4 Q. We'll get to some color photos
5 here soon.

6 A. We're back in the '20s over here
7 with these.

8 (Exhibit-29 was marked for
9 identification.)

10 BY MR. SCHATZ:

11 Q. Looking at Exhibit 29, same
12 question: Would you compare the aesthetics
13 of Exhibit 29 with Exhibit 16?

14 A. 29 is a rectangular shape, a basic
15 rectangular shape, a different configuration of
16 the top, and a different neck.

17 Q. How would you say that the top is
18 different?

19 A. It has a fluted top versus a
20 straight top, also a dome lid versus a
21 nondome.

22 Q. Would you say that Exhibit 29
23 functions as a water bottle?

24 A. Yes.

25 (Exhibit-30 was marked for



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1 identification.)

2 BY MR. SCHATZ:

3 Q. Looking at Exhibit 30, the same
4 question.

5 A. Yeah. Different shape bottle,
6 different neck, dome lid. It's very
7 different looking than 16.

8 Q. Again, when you say dome lid,
9 you're referring to the rounded style cap?

10 A. Rounded, yes.

11 Q. And would you say Exhibit 30
12 functions as a water bottle?

13 A. Yes.

14 (Exhibit-32 was marked for
15 identification.)

16 BY MR. SCHATZ:

17 Q. I'm passing you what's been marked
18 as Exhibit 32. There are a couple separate
19 pages, but it's a picture of the same bottle.

20 Have you ever seen Exhibit 32 on
21 the market?

22 A. No, I haven't.

23 Q. Let's talk about some of the
24 differences between Exhibit 32 and Exhibit 16.

25 First of all, overall would you



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1 say that the two bottles look different?

2 A. Very different.

3 Q. How so?

4 A. On Exhibit 32 there is an indented
5 area on the bottle which holds a rubber band
6 which has a logo. Also, the tether attaches
7 to the bottom of the lid versus the top.
8 The top is completely different, I would say
9 a flat large lid versus the smaller neck lid.

10 Q. When you said that the tether
11 attaches to the bottom of the cap, would you
12 say that a tether that attaches to the bottom
13 of the cap like that is completely different
14 looking than Exhibit 16?

15 A. Yes.

16 Q. Does Exhibit 32 function as a
17 water bottle?

18 A. Yes.

19 (Exhibit-33 was marked for
20 identification.)

21 BY MR. SCHATZ:

22 Q. Same question for Exhibit 33.

23 A. Yes, the bottle shape is very
24 different. It has grooves for the hand.
25 The lid looks like it has a spring mechanism



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1 of some type. The tether, or the connection
2 of the lid to the bottle, looks like a hard
3 plastic versus the Nalgene, which is softer
4 plastic, so very different.

5 Q. You said the grooves for the hand.
6 Would that aid in gripping the
7 bottle?

8 A. Yes.

9 Q. Would you say that Exhibit 33
10 functions as a water bottle?

11 A. Yes.

12 (Exhibit-35 was marked for
13 identification.)

14 BY MR. SCHATZ:

15 Q. I'm passing to you what's been
16 marked as Exhibit 35: Same question.

17 A. Yes. Different shape bottle.
18 It's a dome lid that pops off -- it's kind
19 of a snap mechanism -- and a different type
20 of tether, and very different than the
21 Nalgene bottle.

22 Q. Would you say that the tether
23 looks different because it's substantially
24 shorter?

25 A. Yes, yes.



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1 Q. Then would you say that the base
2 of Exhibit 35 looks different because it's
3 not rounded in any way?

4 A. Yes, correct, different shoulder.

5 Q. Would Exhibit 35 function as a
6 water bottle?

7 A. Yes.

8 (Exhibit-36 was marked for
9 identification.)

10 BY MR. SCHATZ:

11 Q. Here is Exhibit 36.

12 Are you familiar with Exhibit 36?

13 A. Yes.

14 Q. Why don't you describe that for
15 me?

16 A. It's a canteen type bottle and it
17 has a tether lid and functions as a water
18 bottle. Obviously, it's a canteen, and very
19 different, unique canteen shape.

20 Q. When you say a different shape,
21 you mean the body portion?

22 A. The body itself and the lip and
23 the tether; everything is completely different.

24 Q. Why don't you describe the
25 differences between the cap and the tether



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1 separately to Exhibit 16?

2 A. The tether is attached to the base
3 of the cap, whereas on 16 it is attached to
4 the top with a button. On this 36 the
5 tether is in a groove on the lid and that's
6 what holds it to the lid.

7 Q. So Exhibit 36 has a tether, but it
8 still looks different than Exhibit 16?

9 A. Yes, very much so.

10 (Exhibit-37 was marked for
11 identification.)

12 BY MR. SCHATZ:

13 Q. Exhibit 37.

14 Are you familiar with Exhibit 37?

15 A. Yes.

16 Q. And would you agree with me that
17 Exhibit 37 is different looking than Exhibit
18 16?

19 A. Yes.

20 Q. Would you agree with me that
21 Exhibit 37 has a button and a stem, but it
22 still looks different than Exhibit 16?

23 A. Yes.

24 Q. Does Exhibit 37 function as a
25 water bottle?



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1 A. Yes.

2 Q. Would Exhibit 37 function equally
3 as well as a water bottle as Exhibit 16?

4 A. Yes.

5 Q. Let me ask that same question for
6 the bottles we have talked about previously.

7 I asked you the question with
8 respect to the bottles we have looked at so
9 far, whether they function as a water bottle?

10 A. Correct.

11 Q. Would you agree or would you say
12 that each of those bottles serves at least as
13 equally as well as a water bottle than
14 Exhibit 16?

15 A. Yes.

16 Q. And would you say that those with
17 indentations or gripping may actually serve as
18 a water bottle more efficiently than Exhibit
19 16?

20 A. Yes.

21 (Exhibit-38 was marked for
22 identification.)

23 BY MR. SCHATZ:

24 Q. Exhibit 38.

25 Would you agree with me that



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1 Exhibit 38 looks different than Exhibit 16?

2 A. Very much so.

3 Q. Would you agree with me that
4 Exhibit 38 has a cap that when opened still
5 stays attached to the bottle?

6 A. Correct.

7 Q. So you don't lose the cap?

8 A. Yes.

9 Q. Would you say that Exhibit 38
10 functions as a water bottle equally as well
11 or at least as equally as well as Exhibit
12 16?

13 A. Correct.

14 (Exhibit-39 was marked for
15 identification.)

16 BY MR. SCHATZ:

17 Q. Exhibit 39.

18 Would you agree with me that
19 Exhibit 39 does not look similar to Exhibit
20 16?

21 A. Correct.

22 Q. Does Exhibit 39 have a button?

23 A. Yes.

24 Q. And does it have a stem as well?

25 A. Yes.



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1 Q. And does it function as a water
2 bottle?

3 A. Yes.

4 (Exhibit-40 was marked for
5 identification.)

6 BY MR. SCHATZ:

7 Q. Same questions for Exhibit 40.

8 A. Correct, yes.

9 Q. So Exhibit 40 does not look
10 similar to Exhibit 16?

11 A. That's correct.

12 Q. And it functions as a water
13 bottle?

14 A. Yes.

15 Q. At least as well as Exhibit 16?

16 A. Yes, yes.

17 (Exhibit-41 was marked for
18 identification.)

19 BY MR. SCHATZ:

20 Q. Exhibit 41.

21 Have you ever seen Exhibit 41 in
22 the marketplace?

23 A. Yes.

24 Q. Would you agree with me that the
25 bottle shape looks different than Exhibit 16?



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1 A. Completely.

2 Q. Would you agree with me that the
3 way the cap allows access to the water is
4 different than Exhibit 16?

5 A. Yes.

6 Q. Would you agree with me that the
7 cap of Exhibit 41, or the lid, I guess, when
8 it's opened still remains attached to the
9 bottle?

10 A. Yes, corked.

11 Q. Even though it has a cap, that it
12 stays attached when opened, it still looks
13 different than Exhibit 16?

14 A. Yes.

15 (Exhibit-42 was marked for
16 identification.)

17 BY MR. SCHATZ:

18 Q. Exhibit 42.

19 Would you agree with me that
20 Exhibit 42 looks different than Exhibit 16?

21 A. Very much so.

22 Q. How so?

23 A. The cap mechanism is different.
24 There is no tether. The shape of the bottle
25 is different. So it's a completely different



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1 bottle.

2 Q. Similar to the questions I asked
3 with the previous bottle, would you agree
4 with me that the lid remains attached when
5 opened?

6 A. Yes.

7 Q. Would you say that Exhibit 42
8 functions at least as equally as well as a
9 water bottle as Exhibit 16?

10 A. Yes.

11 Q. Just a few more.

12 A. Sure.

13 (Exhibit-43 was marked for
14 identification.)

15 BY MR. SCHATZ:

16 Q. Exhibit 43.

17 Comments on the aesthetics of
18 Exhibit 43 compared to Exhibit 16?

19 A. Completely different bottle shape:
20 43 is rectangular, 16 is circular. Also, the
21 lid is different, the neck is different, the
22 tether is basically the same.

23 Q. The bottle depicted in Exhibit 43,
24 does it function equally as well or at least
25 as equally as well as Exhibit 16?



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1 A. Yes.

2 (Exhibit-44 was marked for
3 identification.)

4 BY MR. SCHATZ:

5 Q. This is all Exhibit 44.

6 Does Exhibit 44 look similar to
7 Exhibit 16?

8 A. Completely different.

9 Q. How so?

10 A. The shape of the bottle and the
11 lid opening mechanism.

12 Q. And is this another example where
13 the lid can be opened, but still remains
14 attached to the bottle?

15 A. Correct.

16 Q. It can do that without the use of
17 a tether?

18 A. Correct.

19 Q. Does Exhibit 44 function at least
20 as equally as well as a water bottle than
21 Exhibit 16?

22 A. Maybe even better.

23 Q. Why so?

24 A. Because it's mine. All of the
25 characteristics would be that when the top



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1 opens on 44, it is completely attached to the
2 neck. The other is tethered and has a
3 tendency to move around. So when you're
4 drinking it, it can kind of bop you in the
5 face, whereas in 44 it is stable and would
6 not bounce around.

7 Q. So a bottle as demonstrated in
8 Exhibit 16 could have the tendency of having
9 the cap hit the user in the face?

10 A. Possibly, yes.

11 (Exhibit-45 was marked for
12 identification.)

13 BY MR. SCHATZ:

14 Q. Exhibit 45.

15 Would you agree with me that the
16 tether of Exhibit 45 attaches to the cap in
17 a different way than Exhibit 16?

18 A. Yes. There is no button and the
19 tether on the lid itself connects around the
20 base of the lid versus the top.

21 Q. So would you say that that is
22 different looking than Exhibit 16?

23 A. Yes, very much so.

24 Q. Does Exhibit 45 function at least
25 as equally as well as a water bottle?



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1 A. Yes.

2 (Exhibit-46 was marked for
3 identification.)

4 BY MR. SCHATZ:

5 Q. Now, I'm going to pass to you what
6 I have marked as Exhibit 46.

7 Just so we can identify for the
8 record what Exhibit 46 is, would you agree
9 with me that Exhibit 46 is the physical
10 sample of Exhibit 36?

11 A. Correct.

12 Q. And would you do me a favor and
13 rotate the cap of Exhibit 46?

14 A. (Witness complies.)

15 Q. Would you agree with me that the
16 cap of Exhibit 46 twists independently of the
17 tether?

18 A. Correct.

19 Q. And would you say the cap twists
20 rather easily?

21 A. Yes.

22 (Exhibit-47 was marked for
23 identification.)

24 BY MR. SCHATZ:

25 Q. I want to do a comparison. I'm



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1 going to pass to you what's been marked as
2 Exhibit 47.

3 Just so we can identify it for the
4 record, would you agree with me that Exhibit
5 47 is the physical sample of Exhibit 16?

6 A. Correct.

7 Q. Now, could you rotate the cap of
8 Exhibit 47?

9 A. (Witness complies.)

10 Q. Would you agree with me that when
11 you rotate the cap of Exhibit 47, there is a
12 tendency for the tether to hit you in the
13 hand?

14 A. Correct.

15 Q. Would you agree with me that that
16 feature of Exhibit 47 makes it more difficult
17 to open than, say, Exhibit 46?

18 A. Correct.

19 Q. Would you also agree with me then
20 the rotation of the cap of Exhibit 47 is not
21 independent of the tether movement?

22 A. Correct.

23 (Exhibit-48 was marked for
24 identification.)

25 BY MR. SCHATZ:



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1 Q. I'm going to ask you some very
2 similar questions with respect to Exhibit 48.

3 Just so we can identify it for the
4 record, would you agree with me that Exhibit
5 48 is the physical sample of Exhibit 39?

6 A. Correct, yes.

7 Q. Would you rotate the cap of
8 Exhibit 48?

9 A. (Witness complies.)

10 Q. Why don't you describe for me the
11 rotation of that cap?

12 A. It is similar to the Nalgene
13 narrow neck, except the tether seems to be
14 too tight around the bottle itself and has a
15 tendency to make it more difficult to get it
16 off.

17 Q. Would you agree with me though
18 with respect to Exhibit 48 that the cap
19 rotates at least more independently of the
20 tether than Exhibit 47?

21 A. I would say about the same.

22 (Exhibit-49 was marked for
23 identification.)

24 BY MR. SCHATZ:

25 Q. Okay. Let's then look at Exhibit



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1 49.

2 So we can identify it, would you
3 agree with me that Exhibit 49 is the physical
4 sample of Exhibit 41?

5 A. Correct.

6 Q. Could you manipulate the opening?

7 A. Yes.

8 Q. Would you say that you can access
9 liquid located in Exhibit 49 more quickly
10 than Exhibit 47?

11 A. Yes.

12 Q. So it's easier to get to the
13 water?

14 A. Yes. Correct.

15 (Exhibit-50 was marked for
16 identification.)

17 BY MR. SCHATZ:

18 Q. Let's then look at Exhibit 50.
19 Same question with respect to Exhibit 50.
20 Let's identify it first.

21 Is Exhibit 50 the physical sample
22 of Exhibit 42?

23 A. Correct.

24 Q. Same question there.

25 Would you manipulate the top? Have



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1 you done that?

2 A. Yes.

3 Q. Would you agree with me that it's
4 easier to access the water from Exhibit 50
5 than it is with respect to Exhibit 47?

6 A. Correct.

7 Q. How so?

8 A. Because you don't have to unscrew
9 the top; you can just flip it back.

10 Q. So it's easier to access with the
11 flip-top?

12 A. Yes, it is.

13 (Exhibit-51 was marked for
14 identification.)

15 BY MR. SCHATZ:

16 Q. And then let's just look at
17 Exhibit 51.

18 Do you agree with me that Exhibit
19 51 is the physical example of Exhibit 45?

20 A. Yes.

21 Q. And would you manipulate the top
22 or cap to open it?

23 A. Yes.

24 Q. With respect to Exhibit 47, you
25 indicated that manipulating the cap may result



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1 in the user being hit in the hand by the
2 tether?

3 A. Yes. Correct.

4 Q. Would you say that that feature is
5 eliminated by Exhibit 51?

6 A. Correct.

7 Q. And how is that done?

8 A. Just because your hand is able to
9 fit over the entire top and you're able to
10 twist it off without the tether getting in
11 the way.

12 Q. Is that because the tether is
13 attached not to a button on the top, but to
14 the lower portion of the cap?

15 A. The base of the lid; that's
16 correct.

17 Q. The physical bottles that we have
18 looked at today, would you agree that they
19 all look -- let me just identify those by
20 number.

21 Looking at Exhibits 46 through 51,
22 would you agree with me that each of those
23 bottles look different than Exhibit 16?

24 A. Very much so.

25 Q. For various reasons?



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1 A. Various reasons, right.

2 Q. Would you say that each of those
3 bottles function at least as well as a water
4 bottle than Exhibit 16?

5 A. Correct.

6 Q. As well as Exhibit 47?

7 A. Yes.

8 MR. SCHATZ: That's all I have.

9 (Witness was excused.)

10 (Deposition concluded at 10:10
11 a.m.)

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DESCRIPTION OF EXHIBITS

EXHIBIT DESCRIPTION

15	Example of Tether Cap on Boston Round Bottle
16	Silhouette of Water Bottle
19	Picture of Triforest Water Bottle
20	Picture of Triforest Crystal Cut Bottle
22	Picture of The Journeyer 34 oz. Polycarbonate Bottle
23	Picture of The Rx 21 oz. Collapsible Water Bottle
24	Picture of The Outfitter 24 oz. Polycarbonate Sports Bottle
29	Picture of Lexan Water Bottle 15 oz.
30	Picture of Kayak Centre Lexan Water Bottle
32	Picture of Water Bottle
33	Picture of American Alpine Club 32 oz. Water Bottle
35	Picture of Water Bottle
36	Picture of Water Bottle
37	Picture of Water Bottle
38	Picture of Water Bottle
39	Picture of Water Bottle

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DESCRIPTION OF EXHIBITS (CONT.)

EXHIBIT DESCRIPTION

40	Picture of Water Bottle
41	Picture of Water Bottle
42	Picture of Water Bottle
43	Picture of Water Bottle
44	Picture of Water Bottle
45	Picture of Water Bottle
46	Water Bottle
47	Water Bottle
48	Water Bottle
49	Water Bottle
50	Water Bottle
51	Water Bottle

(Exhibits 46 through 51 were retained by
counsel.)

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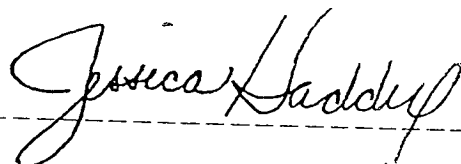
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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the deposition of FREDRIC EDELSTEIN, taken on August 28, 2006, and that this is a true and correct transcript of same.



Jessica Haddix, Registered
Professional Reporter and
Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)



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CAPTION

1
2 The Deposition of **Fredric Edelstein**,
3 taken in the matter, on the date, and at the
4 time and place set out on the title page
5 hereof.

6 It was requested that the deposition
7 be taken by the reporter and that same be
8 reduced to typewritten form.

9 It was agreed by and between counsel
10 and the parties that the Deponent will read
11 and sign the transcript of said deposition.
12
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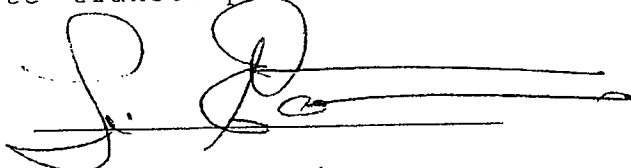
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STATE OF Pennsylvania:COUNTY/CITY OF Philadelphia:

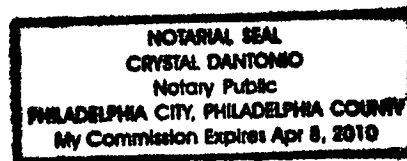
Before me, this day, personally
appeared, **Fredric Edelstein**, who, being duly
sworn, states that the foregoing transcript
of his/her Deposition, taken in the matter,
on the date, and at the time and place set
out on the title page hereof, constitutes a
true and accurate transcript of said
deposition.


Fredric Edelstein

SUBSCRIBED and SWORN to before me this
22nd day of September, 2006 in the
jurisdiction aforesaid.

April 8, 2010 C. D. Antonio

My Commission Expires Notary Public

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DEPOSITION ERRATA SHEET

RE: SetDepo, Inc.
 File No. 11192
 Case Caption: Triforest Enterprises, Inc.
 vs. Nalge Nunc International Corporation

Deponent: **Fredric Edelstein**
 Deposition Date: August 28, 2006

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

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Deposition of Fredric Edelstein

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DATE: 9/21/06

Fredric Edelstein


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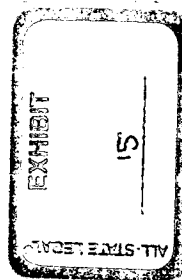
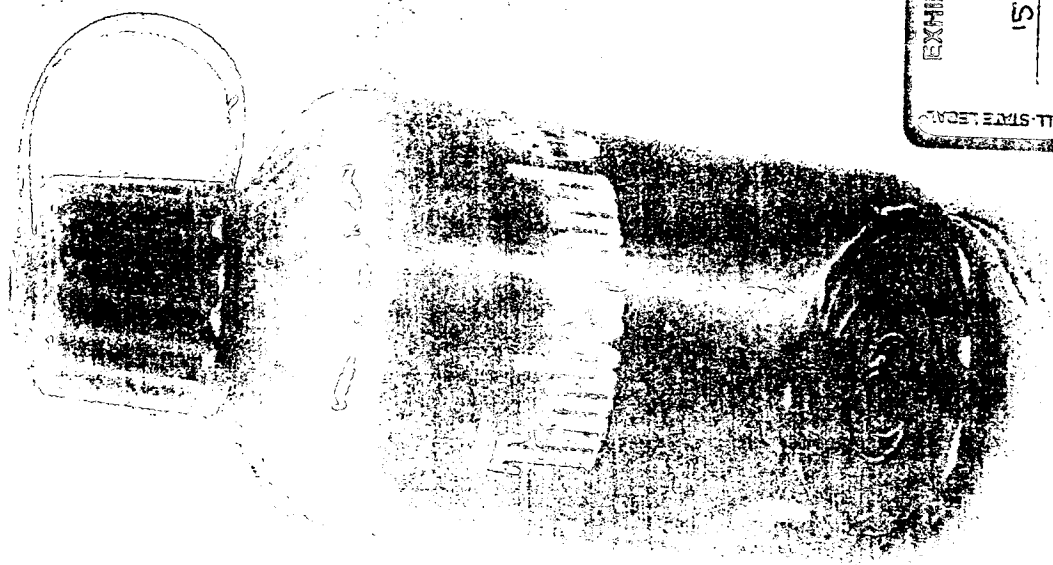
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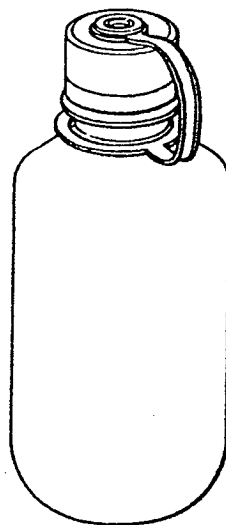
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Example of Tether Cap on Boston Round Bottles

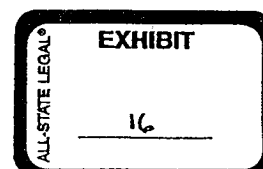


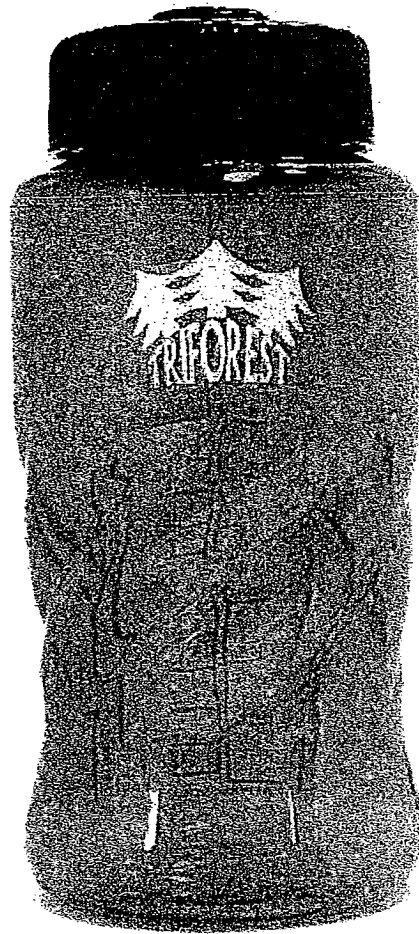
DRAWING PAGE

Serial No. 76/572,253
THE CONFIGURATION OF A
PLASTIC WATER BOTTLE, SOLD
EMPTY



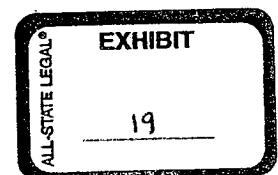
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Applicant Nalge Nunc Int'l Inc Exhibit 16





Triforest Ent v. Nalgene
Opposition No. 91165809
Serial No. 76/572,253
Applicant Nalge Nunc Int'l Inc Exhibit 19

http://www.triforest.com/Products/t-tol_large.jpg



7/17/2006



Introducing TriForest Crystal Cut Bottles

Available in 4 colors in the 750 ml size with limited edition silver cap and screen print. Click on the pictures below to see the enlarged version.

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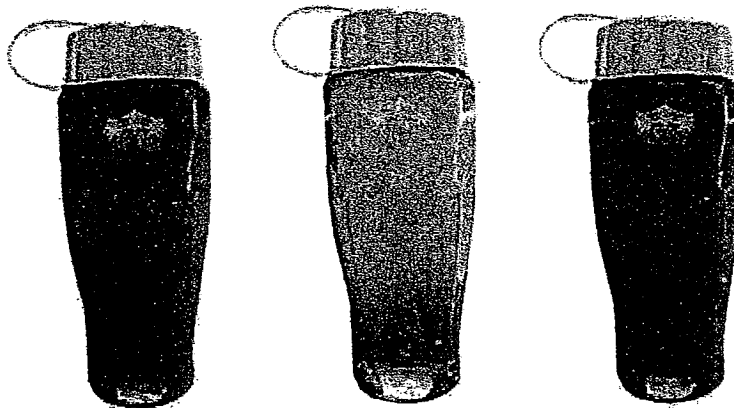
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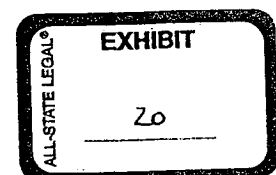
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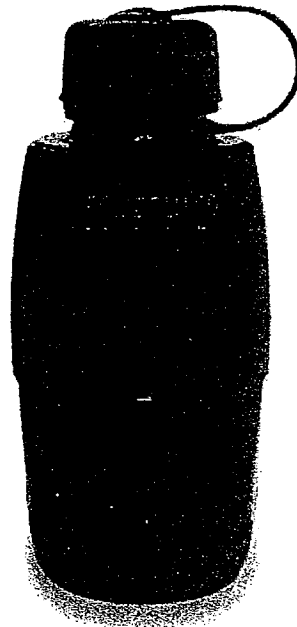
TriForest Ent v. Nalgene
Opposition No. 91165809
Serial No. 76/572,253
Applicant Nalge Nunc Int'l Inc Exhibit 20

<http://www.triforest.com/main.html>



7/17/2006

#5190: The Journeyer 34 oz. Polycarbonate Bottle



- ⊗ Giant 34 oz. capacity!
- ⊗ Loop top design
- ⊗ Matching color lids
- ⊗ Measurement guide on back

We think you'll take one look at this great polycarbonate bottle and start thinking about how to use it for your next promotion. The Journeyer just invites a dramatic imprint on a beautiful color selection and the contoured design is perfect for comfort. Your lucky recipients will be anxious to hook the bottle onto belt or backpack and hit the trail. With a 34 ounce capacity, they'll be able to trek a long ways without a refill. Through it all, your logo will accompany them, reminding all of your services and generosity.

Item Number	72	144	288	596	1,008
5190	\$5.50	\$5.20	\$5.00	\$4.80	\$4.60

Set-up charge: \$45.00

Running charges: Price includes per piece running charge for one-color imprint on one or both sides

Dimensions: 8 3/4" high by 4" diameter (top) by 3 3/4" diameter (bottom)

Imprint area size: 1 1/8" high by 2 1/2" wide (on each side)

Color choices: Green (G), red (R), blue (B) or smoke (SM) with matching lids

Packaging: Individually polybagged; 24/13 lbs.

Production time: 10 to 15 working days

Rush service: Usually available (contact customer service)

Washing instructions: Hand washing only recommended



sportsbottleworld.com

2616 Mesilla Street NE, Suite 1, Albuquerque, NM 87110

Telephone: (888) 321-3675 (toll free) or (505) 314-2977

Fax: (800) 809-8386 (toll free fax) or (505) 314-2982

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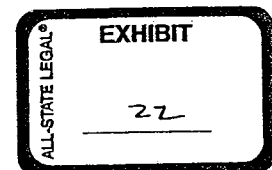
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TriForest Ent v. Nalgene

Opposition No. 91165809

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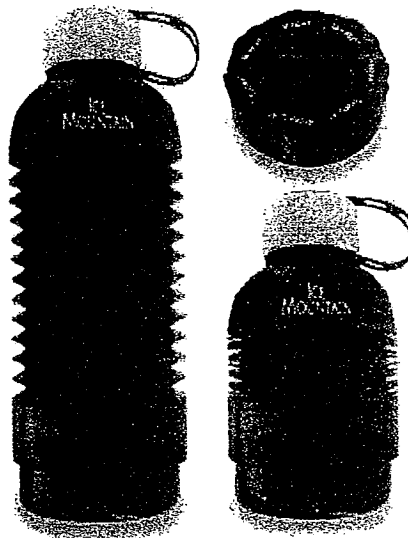
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<http://www.sportsbottleworld.com/005190b.htm>

7/17/2006

#5081: The Rx 21 oz. Collapsible Water Bottle



- ⊗ Collapsible
- ⊗ Holds a 7-day medication supply
- ⊗ A terrific traveling companion

Here's a neat traveling companion ... a nifty translucent collapsible water bottle. Great for storage purposes on trips, but it also has another feature which is not so readily apparent. Discreetly attached to the base of this bottle is a seven-day pillbox! Simply put in a supply of medication, pack the bottle in a suitcase and be off! Once on vacation, one only has to expand the bottle and add water. The recipients of this thoughtful gift will truly be appreciative. And more than likely they will be toting your advertising all over the country and even the world with them. A great reminder on a daily basis of your services!

Item Number	120	240	540	1,020	2,520
5081	\$5.75	\$5.50	\$5.25	\$5.00	\$4.75

Set-up charge: \$40.00

Running charges: Price includes one-color, one-location imprint (multiple color imprint not available)

Dimensions: 8 1/4" by 3" diameter

Imprint area size: 2" wide by 9/16" high

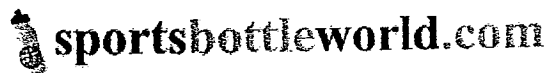
Color choices: Translucent red (TrR) or blue (TrB)

Packaging: Gift box; 60/24 lbs.

Production time: 10 to 12 working days

Rush service: Usually available (contact customer service)

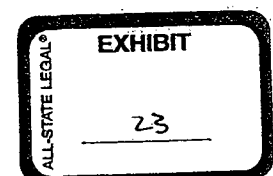
Washing instructions: Hand washing only recommended



2616 Mesilla Street NE, Suite 1, Albuquerque, NM 87110
 Telephone: (888) 321-3675 (toll free) or (505) 314-2977
 Fax: (800) 809-8386 (toll free fax) or (505) 314-2982
 E-mail: Sales@SportsBottleWorld.com

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TriForest Ent v. Nalgene
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 Applicant Nalge Nunc Int'l Inc Exhibit 23



#5196: The Outfitter 24 oz. Polycarbonate Sports Bottle



- Unique sipper top
- Contoured sides
- Beautiful translucent colors

Fit your hands around this neat polycarbonate bottle! Its great contour shape will complete any outfit anywhere! Whether you're working out, or working in the great outdoors or getting fit on the nearest or farthest trails, the Outfitter 24 ounce polycarbonate bottle is perhaps the right choice. Just unscrew the lid to reveal the uniquely designed sipper top. Use the tethered lid to secure the bottle to a belt, backpack or bag and off you go! It will hold up to the toughest treatment and still proclaim your company's virtues. It's a winner at a great price!

Item Number	150	250	500	1,000	2,500
5196	\$3.25	\$3.05	\$2.95	\$2.85	\$2.75

Set-up charge: \$45.00 per color

Running charges: Price includes one-color, one-location imprint; each additional color add \$.25 per sports bottle

Dimensions: 8 1/2" high by 3" diameter

Imprint area size: 1 3/4" diameter

Color choices: Blue (B), red (R) or clear (CL)

Packaging: Individually polybagged; 48/22 lbs.

Production time: 10 to 15 working days

Rush service: Usually available (contact customer service)

Washing instructions: Hand washing only recommended



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Telephone: (888) 321-3675 (toll free) or (505) 314-2977

Fax: (800) 809-8386 (toll free fax) or (505) 314-2982

E-mail: Sales@SportsBottleWorld.com

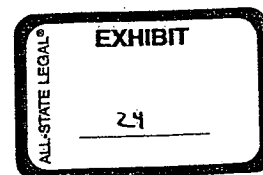
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TriForest Ent v. Nalgene

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Applicant Nalge Nunc Int'l Inc Exhibit 24






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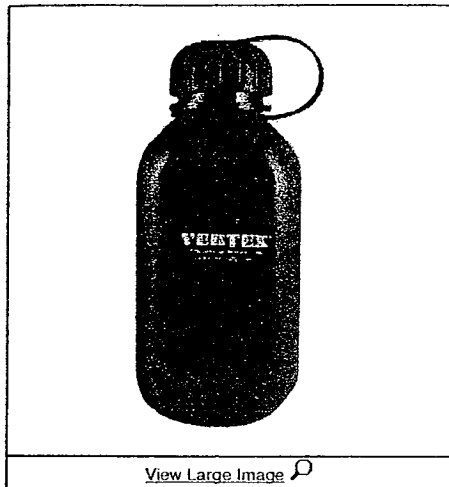

Product Search:

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Lexan Water Bottle 28 oz

Lexan Water Bottle 28 oz

LEX28

[View Large Image](#) [Details](#)[Options](#)[Add to Cart](#)

-Polycarbonate Canteen Shape

-Tethered Cap in Black only

Product Size:

28 oz.

Product Weight:

48 / 18 lbs

Additional Information:

Imprint Area: 4" H X 1 7/8" W - 1 Side Only

Rush orders: Call factory prior to submitting a Rush Order for specific product availability. A Rush Order is one that does not follow our normal production time schedule.

 [Email Product](#) [Request Information](#)

Qty: 96
Price: 4.19 (Each)

144
4.09 (Each)

288
3.99 (Each)

576
3.89 (Each)

Prices in USD


NOTE: Base prices are listed. See [Product Options](#) for other charges !!

Recently Viewed Products

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LEX28 Lexan Water Bottle 28 oz
3.89 - 4.19 (USD) / Min. Qty: 96

[Details](#) | [Order](#) | [Compare](#)

DP-914 21 oz. Collapsible Water Bottle with Pill Box
5.51 - 7.41 (USD) / Min. Qty: 120
 Rush Available

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QUENCHER Quencher Polycarbonate Bottle

4.85 - 9.00 (USD) / Min. Qty: 48
 Rush Available

[Details](#) | [Order](#) | [Compare](#)

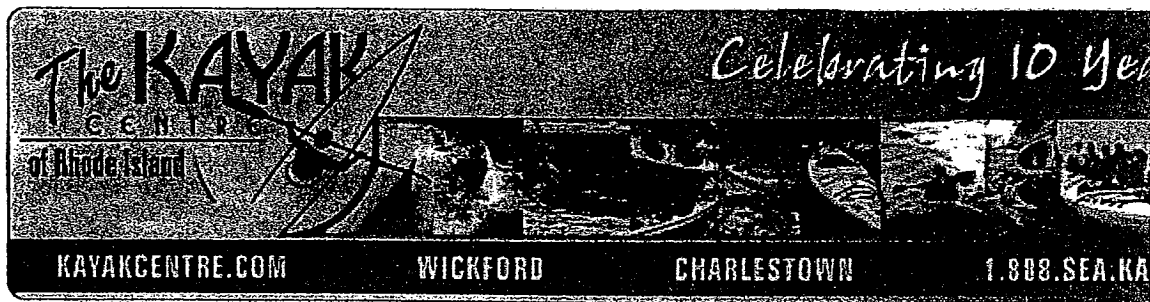
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TriForest Ent v. Nalgene
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<http://www.bi> Applicant Nalge Nunc Int'l Inc Exhibit 29

?SupplierItemGUID=4920D46E-4DF... 7/17/2006



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The Kayak Centre Lexan Water Bottle

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Item #: AAP0002

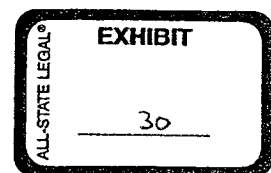
☐ Tell A Friend

☒ Favorites

Your Price: \$7.50

Enjoy your drinks hot or cold in the Kayak Centre's H2Go bottle. This 32 oz. bottle comes in red with the K logo in white. Great as a gift for yourself or your favorite paddler.

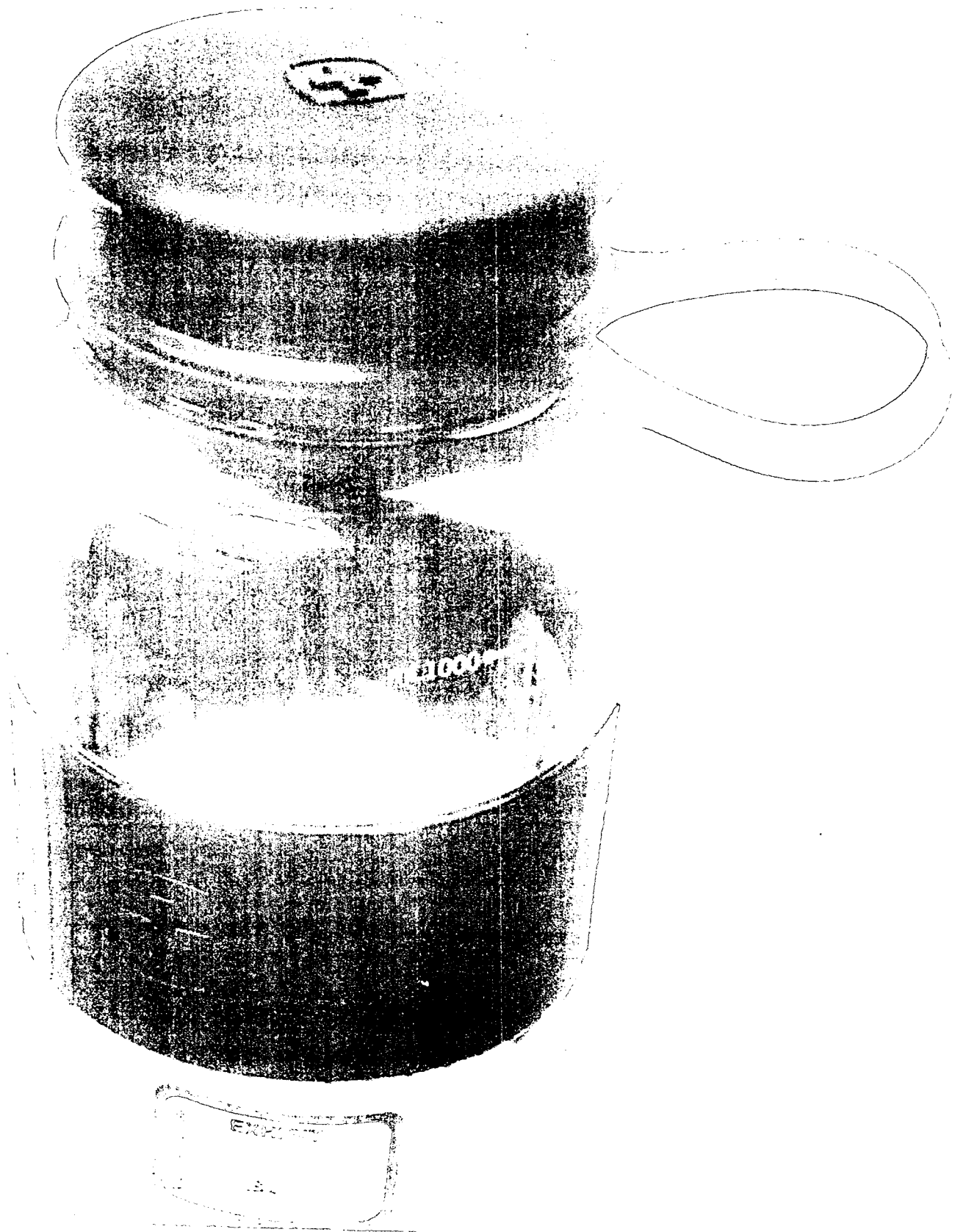
TriForest Ent v. Nalgene
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 Applicant Nalge Nunc Int'l Inc Exhibit 30



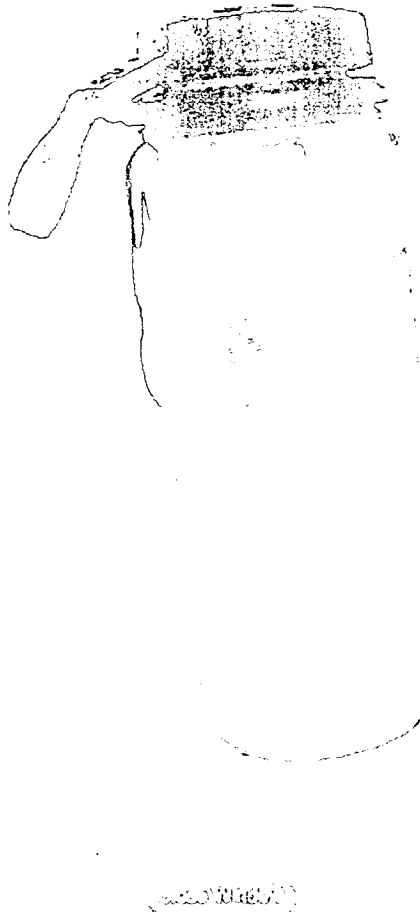


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Applicant Nalge Nunc Int'l Inc Exhibit 32

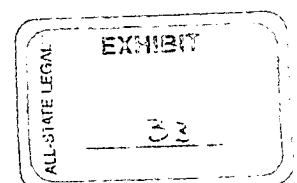




Water Bottle - 32 fluid ounces
by American Alpine Club

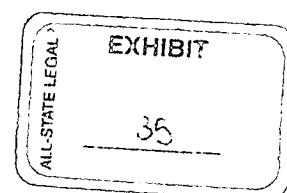


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Applicant Nalge Nunc Int'l Inc Exhibit 33

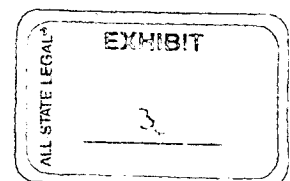


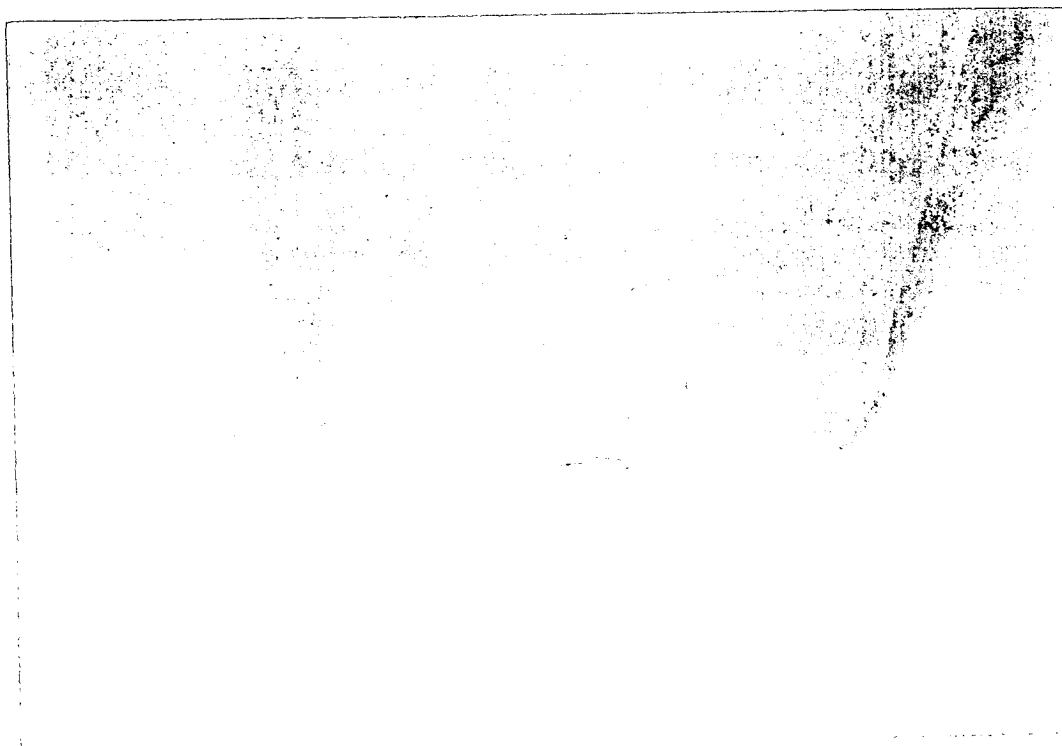


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Applicant Nalge Nunc Int'l Inc Exhibit 35

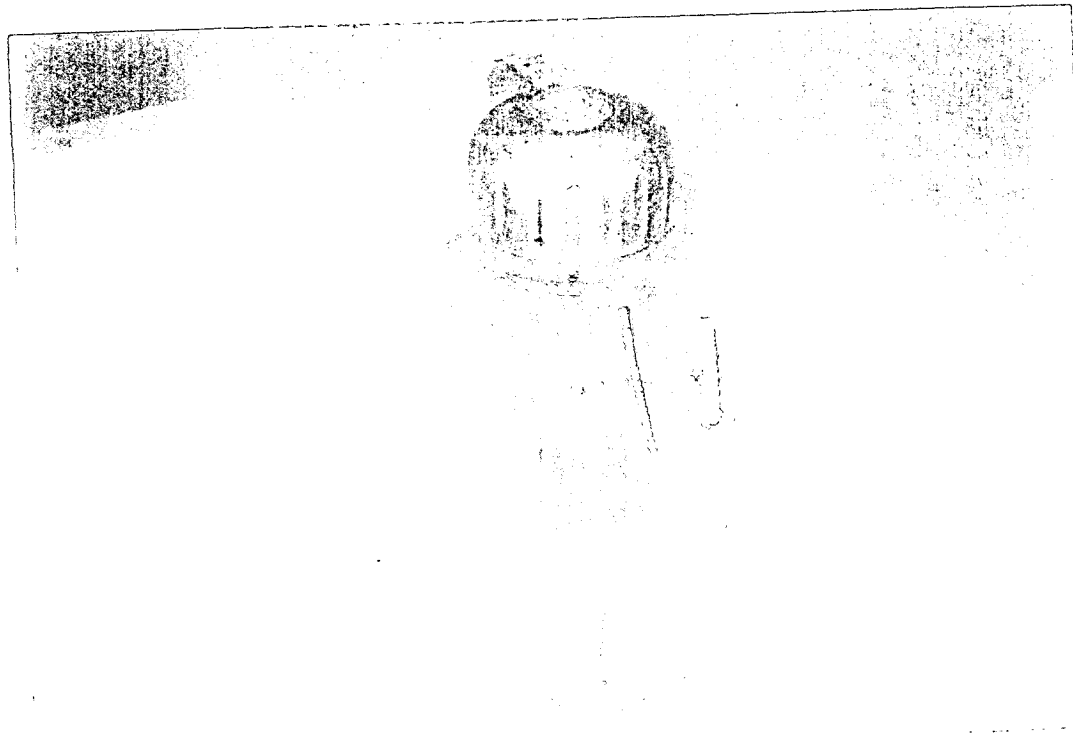


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Applicant Nalge Nunc Int'l Inc Exhibit 3b

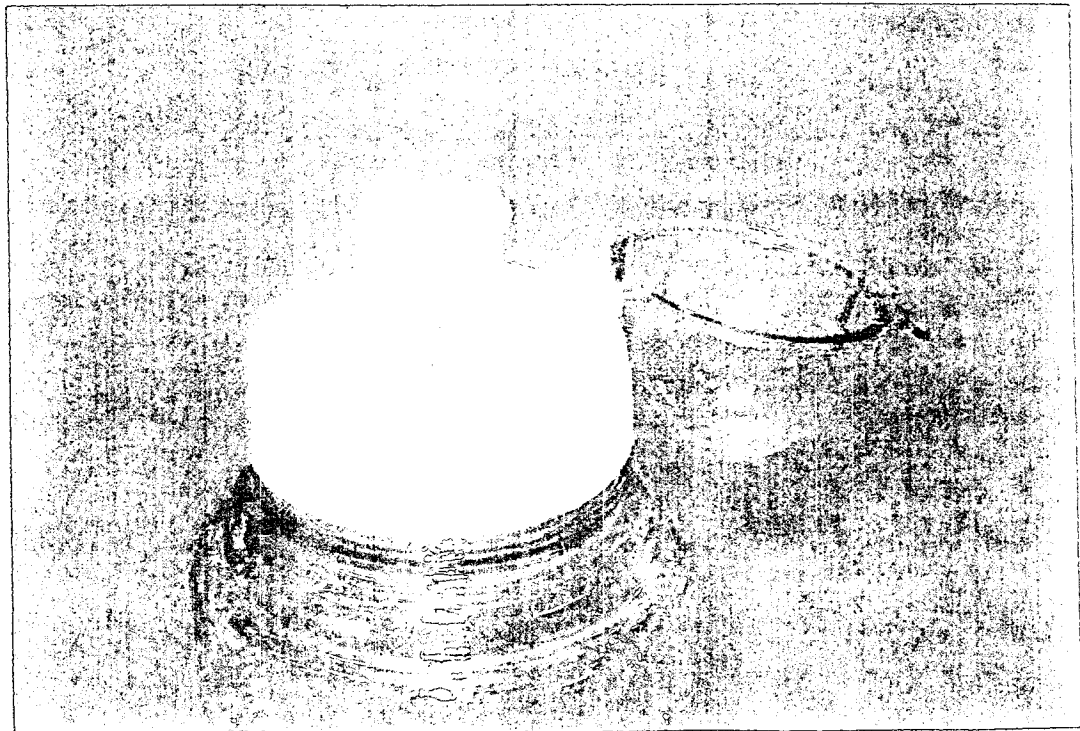




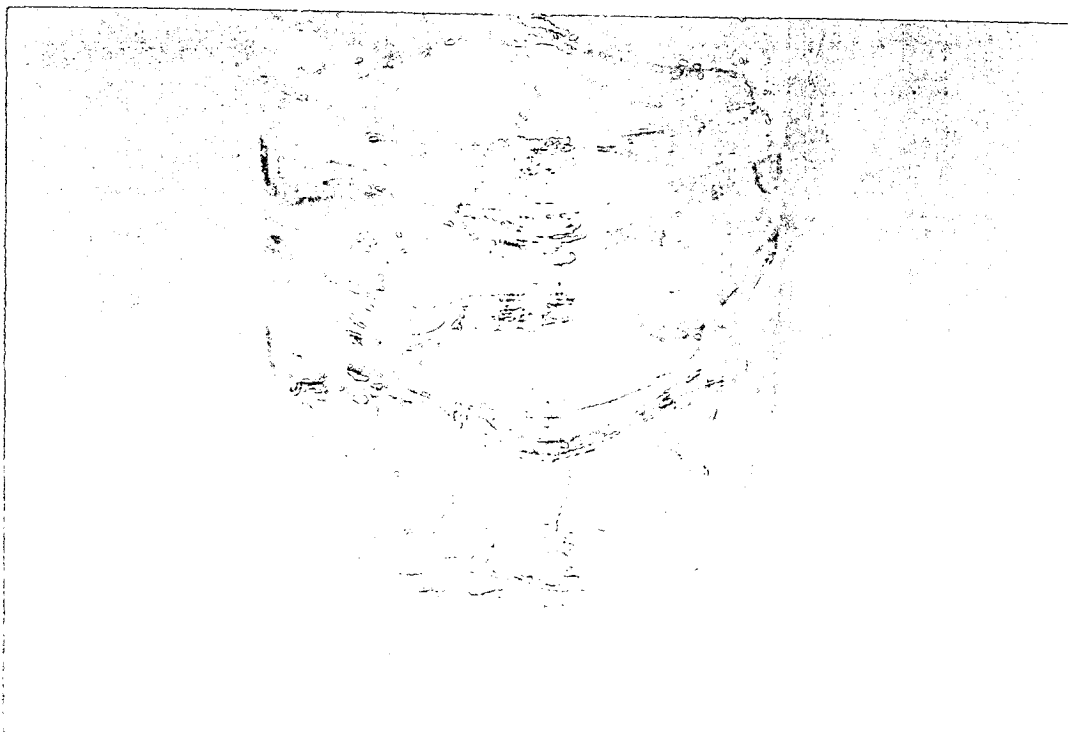
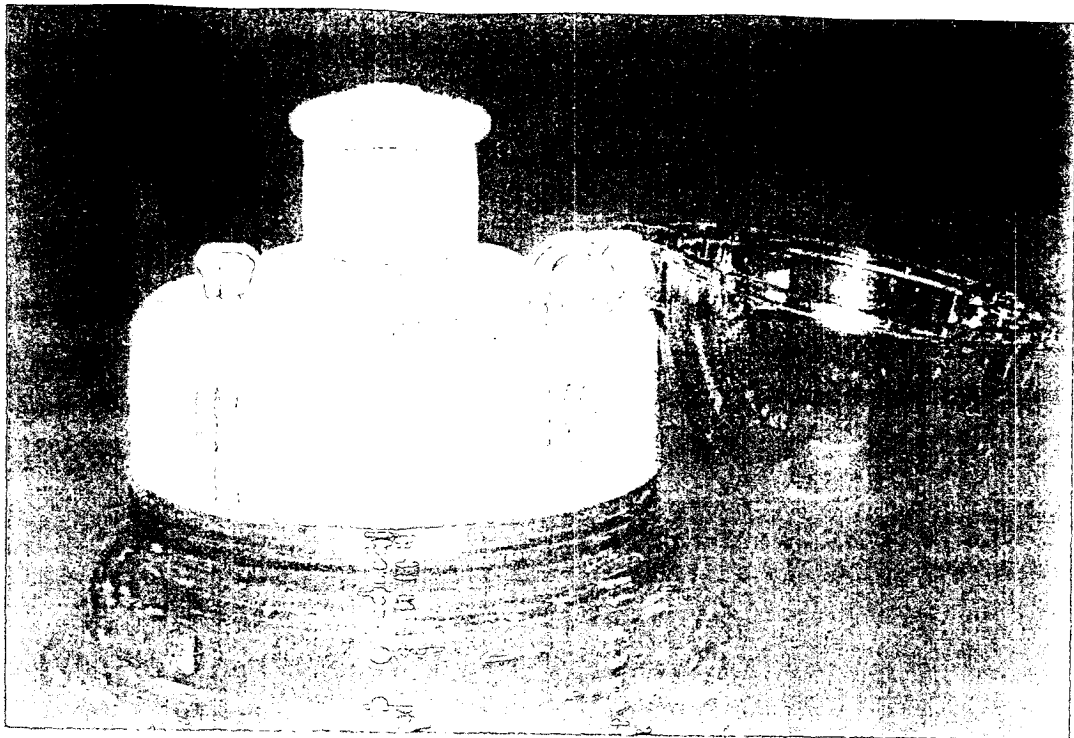
TriForest Ent v. Nalgene
Opposition No. 91165809
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Applicant Nalge Nunc Int'l Inc Exhibit 37 - 1



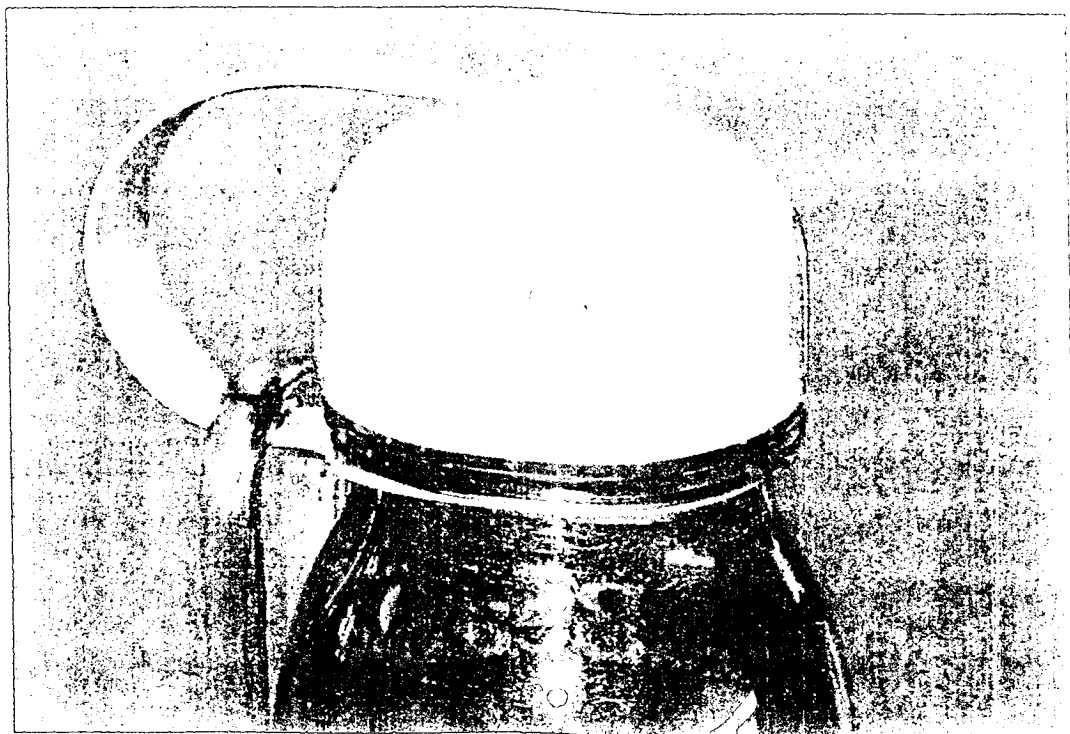
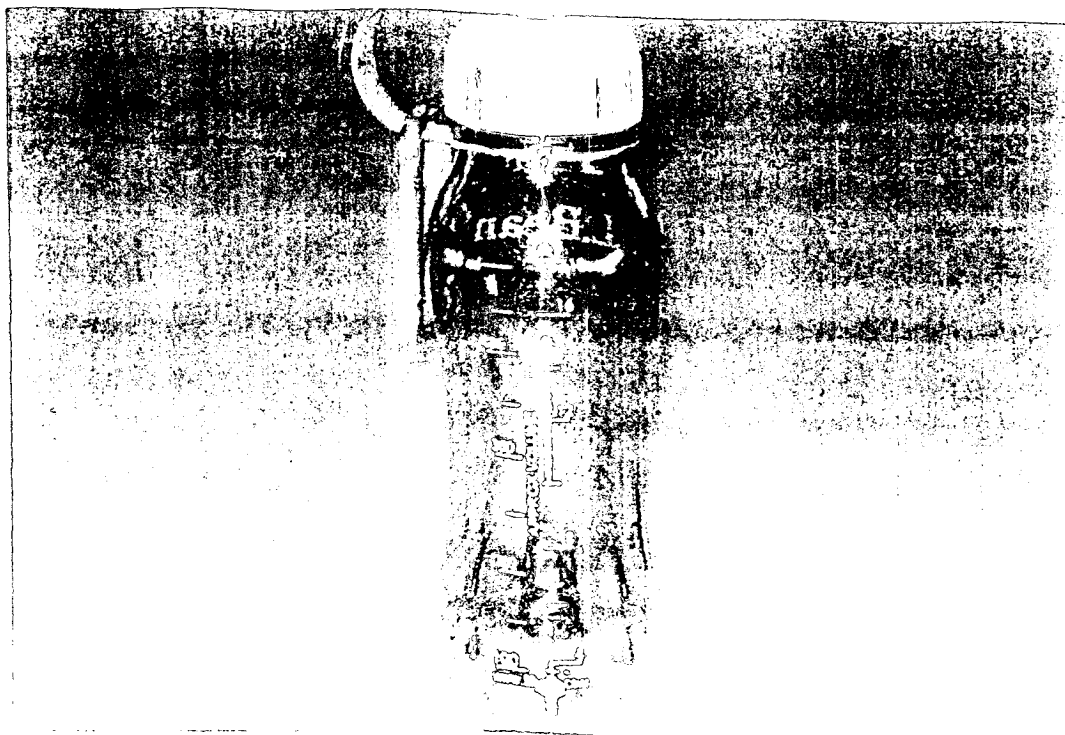
TriForest Ent v. Nalgene
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Applicant Nalge Nunc Int'l Inc Exhibit 37-2



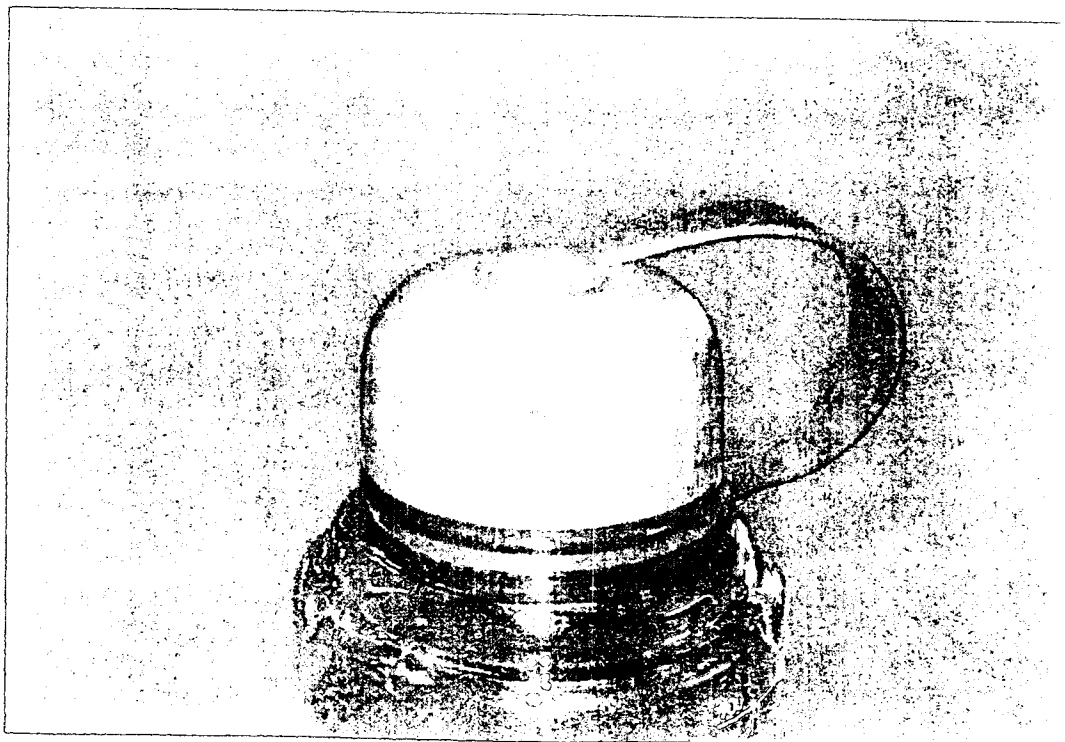
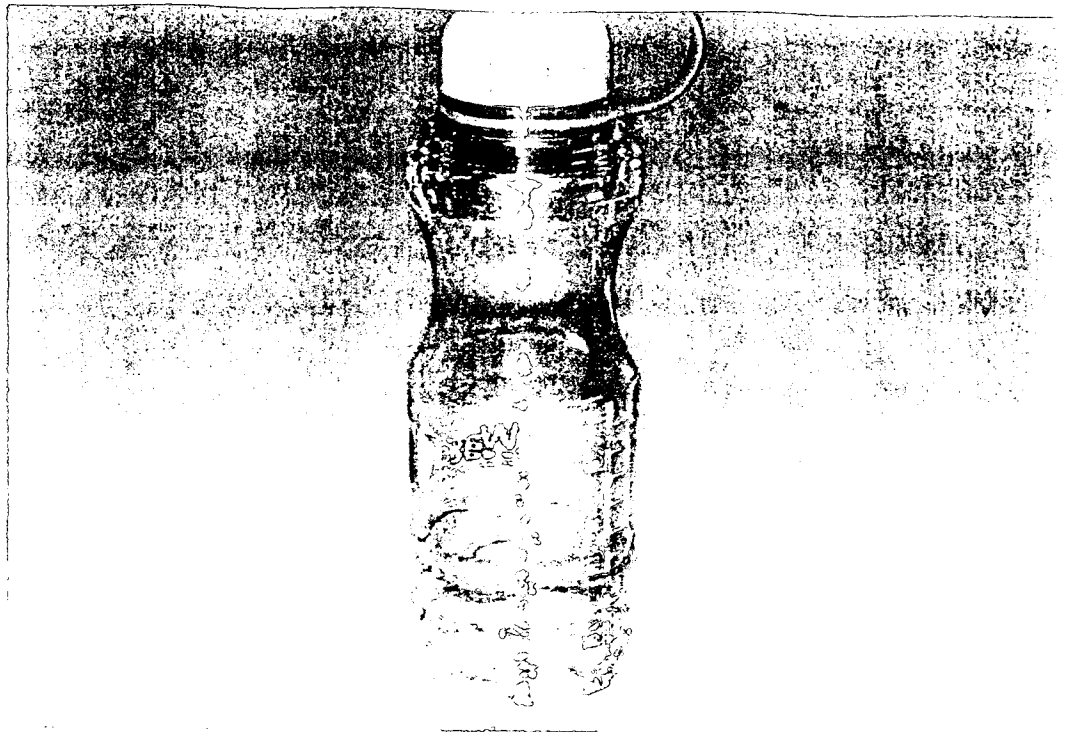
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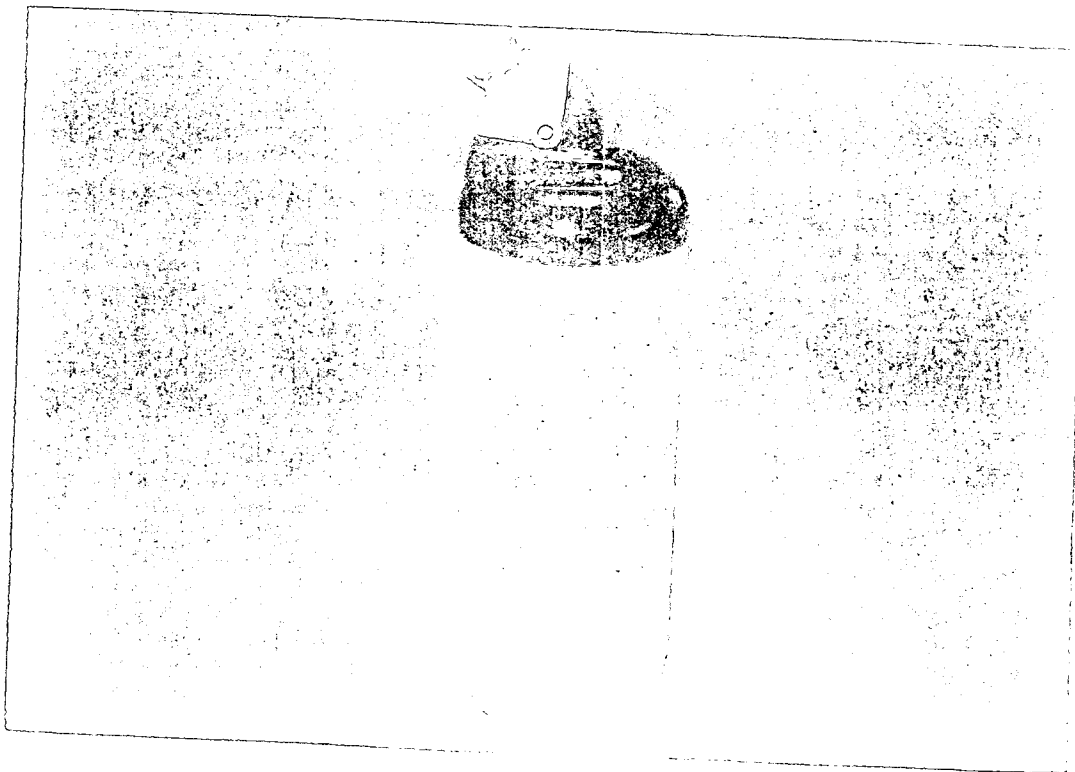
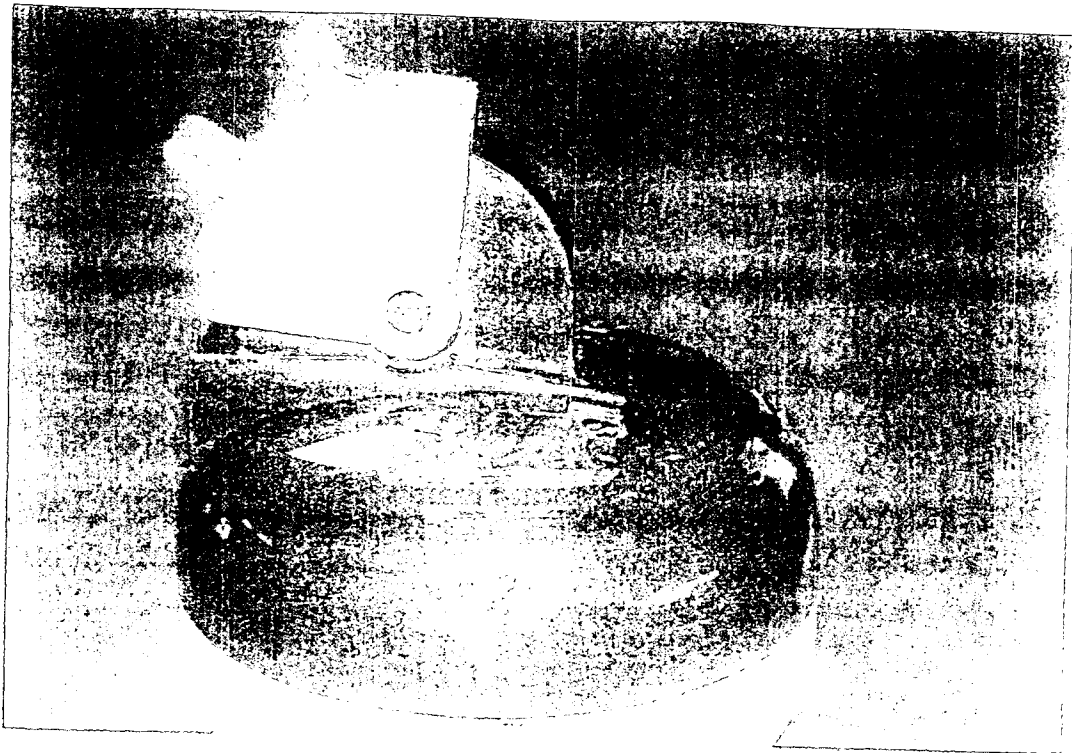
TriForest Ent v. Nalgene
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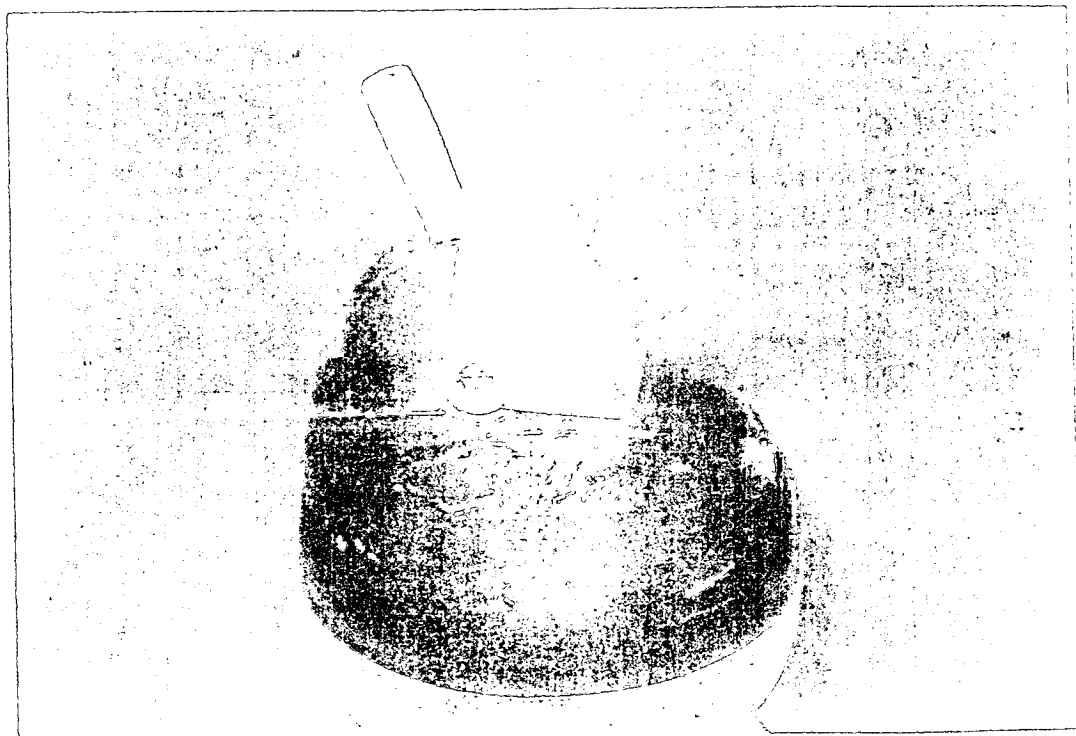
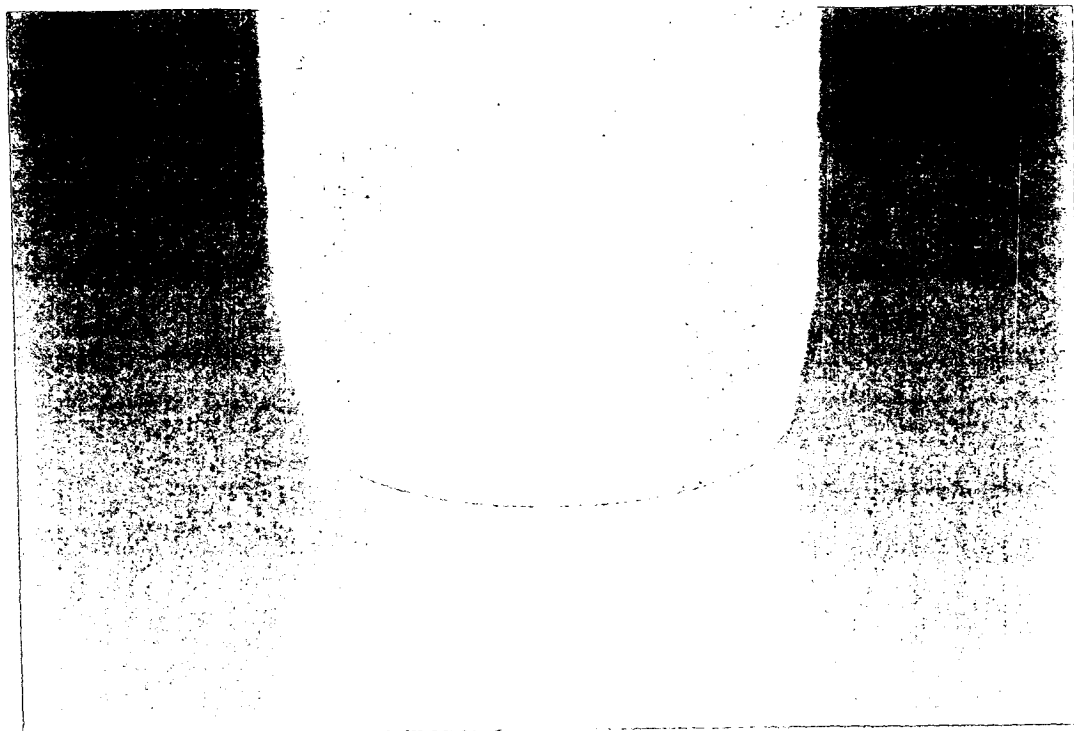
TriForest Ent v. Nalgene
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Applicant Nalge Nunc Int'l Inc Exhibit 70 -1



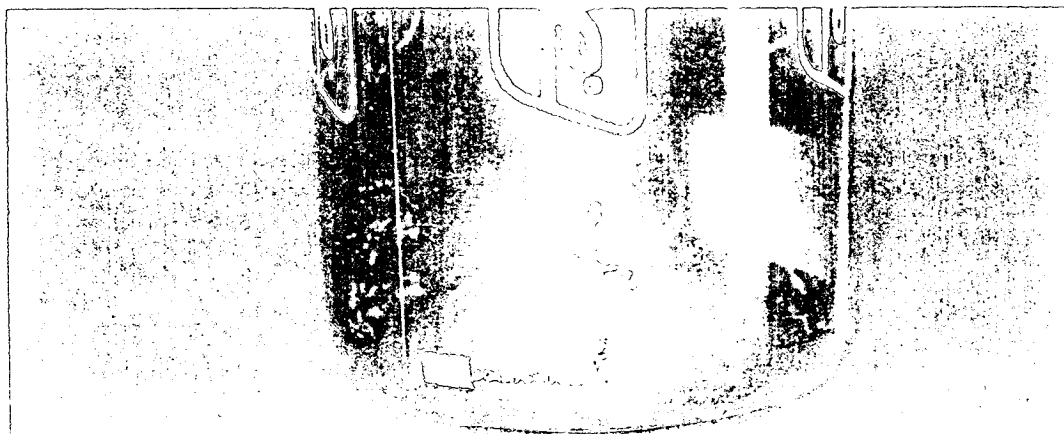
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Applicant Nalge Nunc Int'l Inc Exhibit 40-2



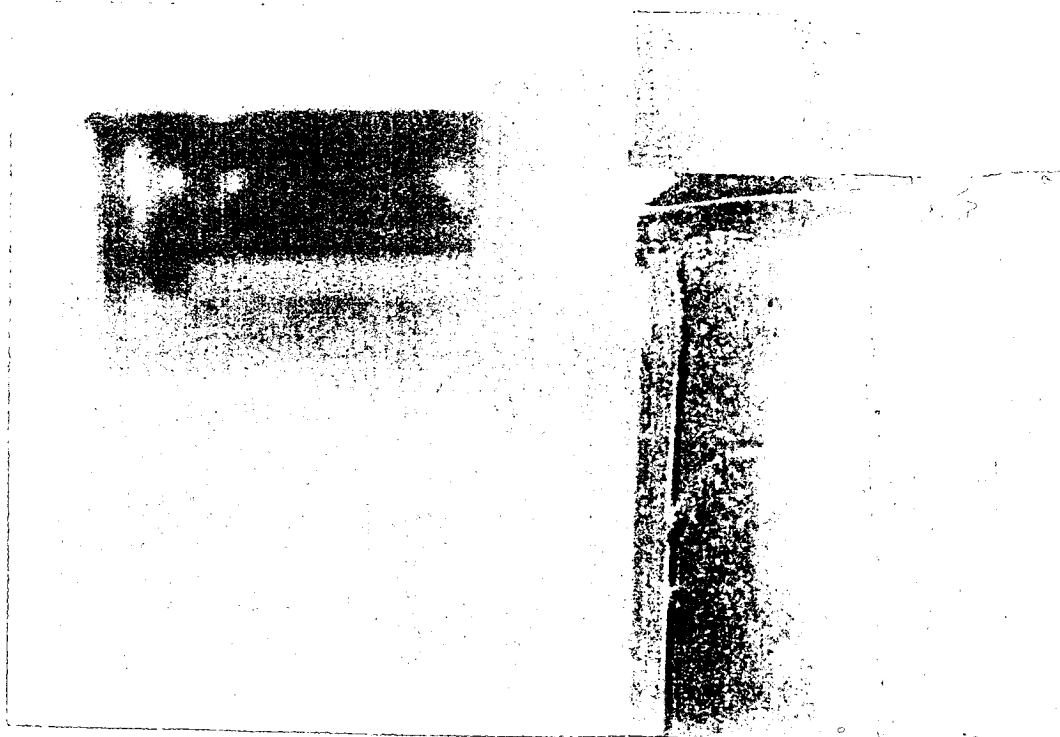
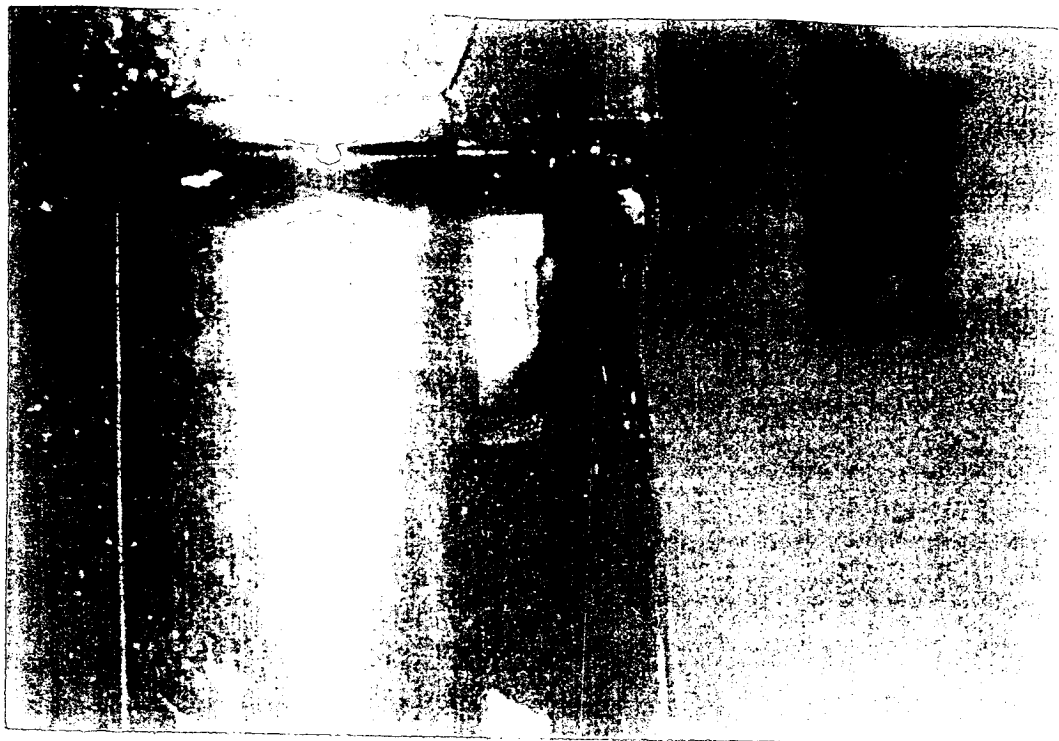
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Applicant Nalge Nunc Int'l Inc Exhibit 41 - 1



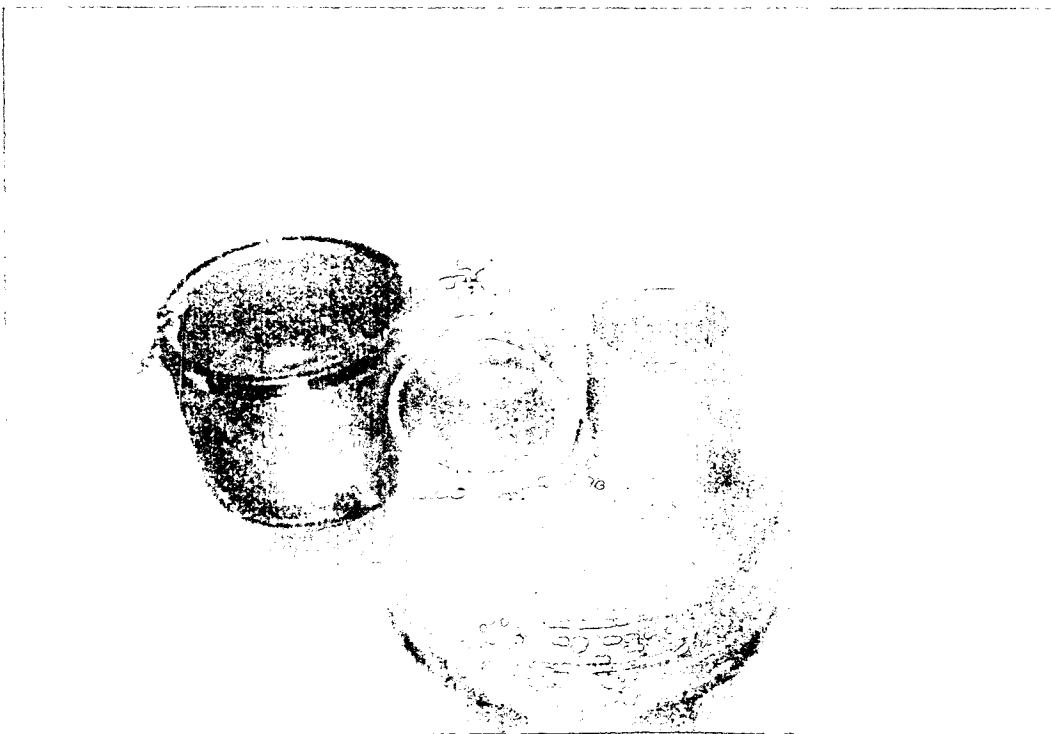
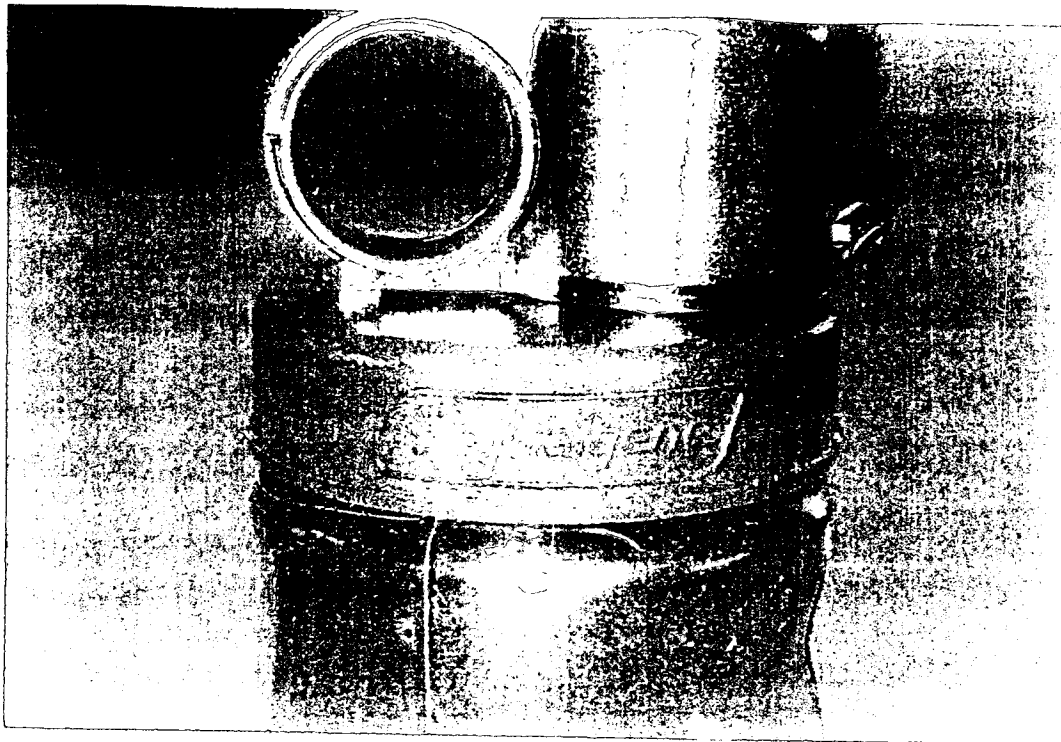
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Applicant Nalge Nunc Int'l Inc Exhibit 41-2



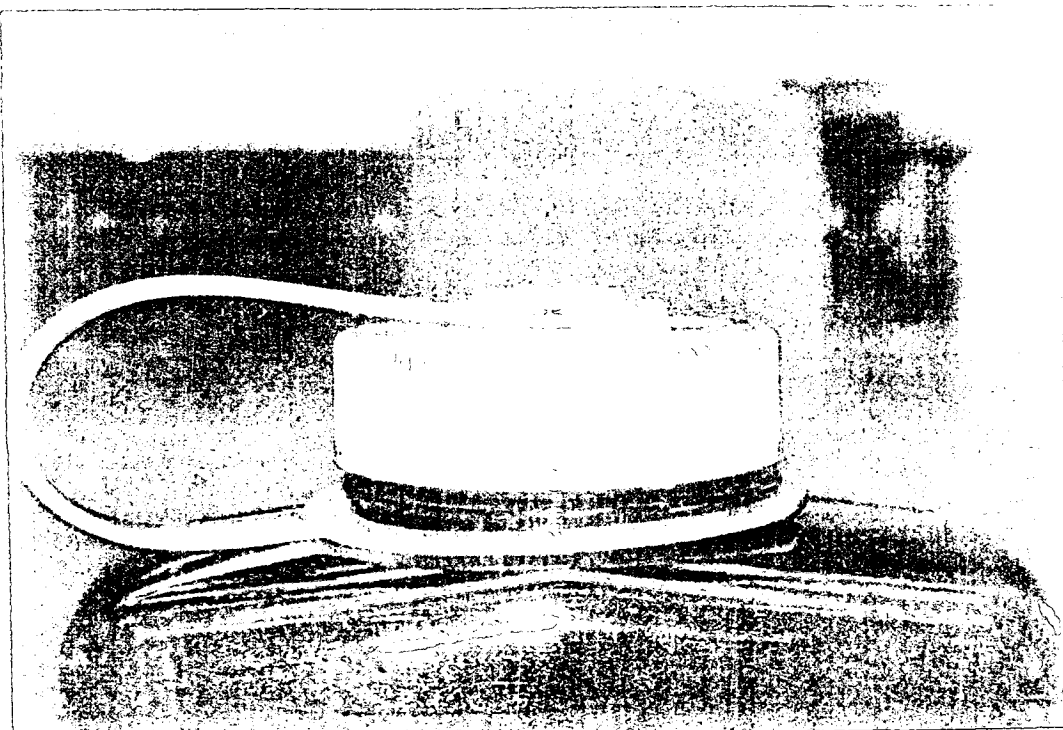
TriForest Ent v. Nalgene
Opposition No. 91165809
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Applicant Nalge Nunc Int'l Inc Exhibit 42-1



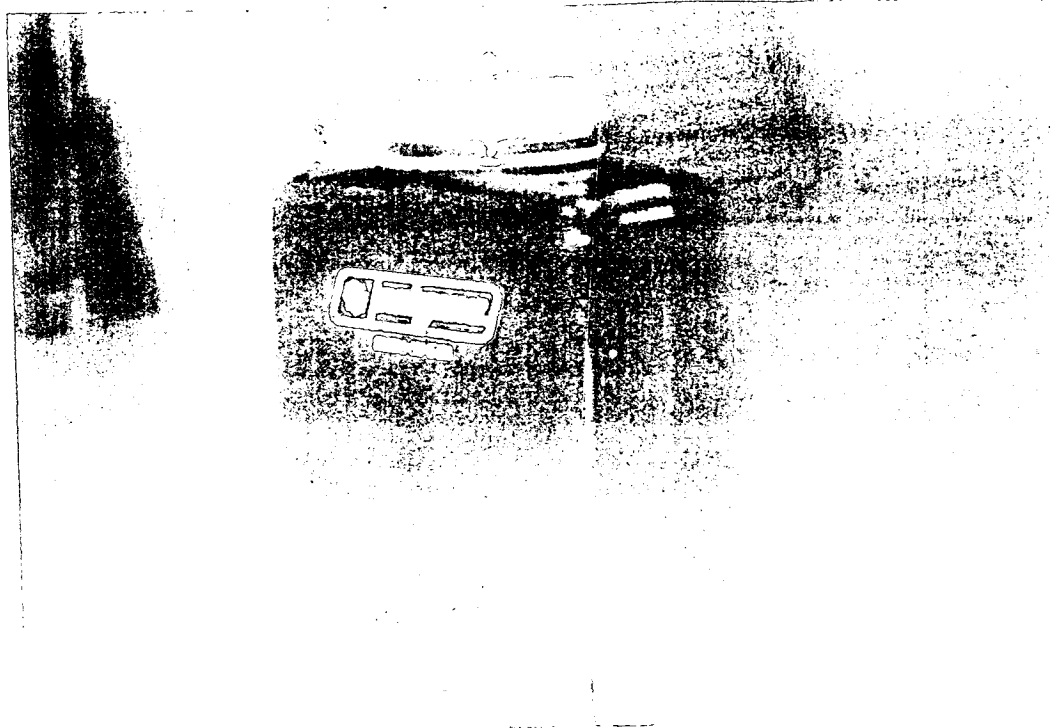
TriForest Ent v. Nalgene
Opposition No. 91165809
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Applicant Nalge Nunc Int'l Inc Exhibit 6/2-2



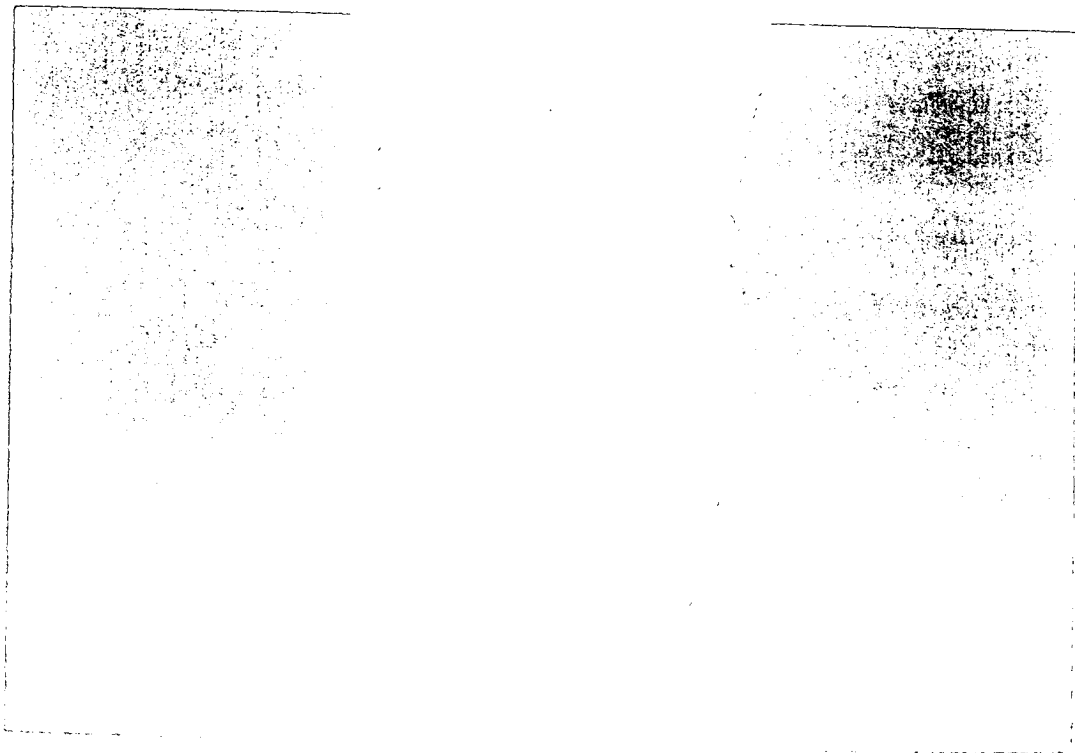
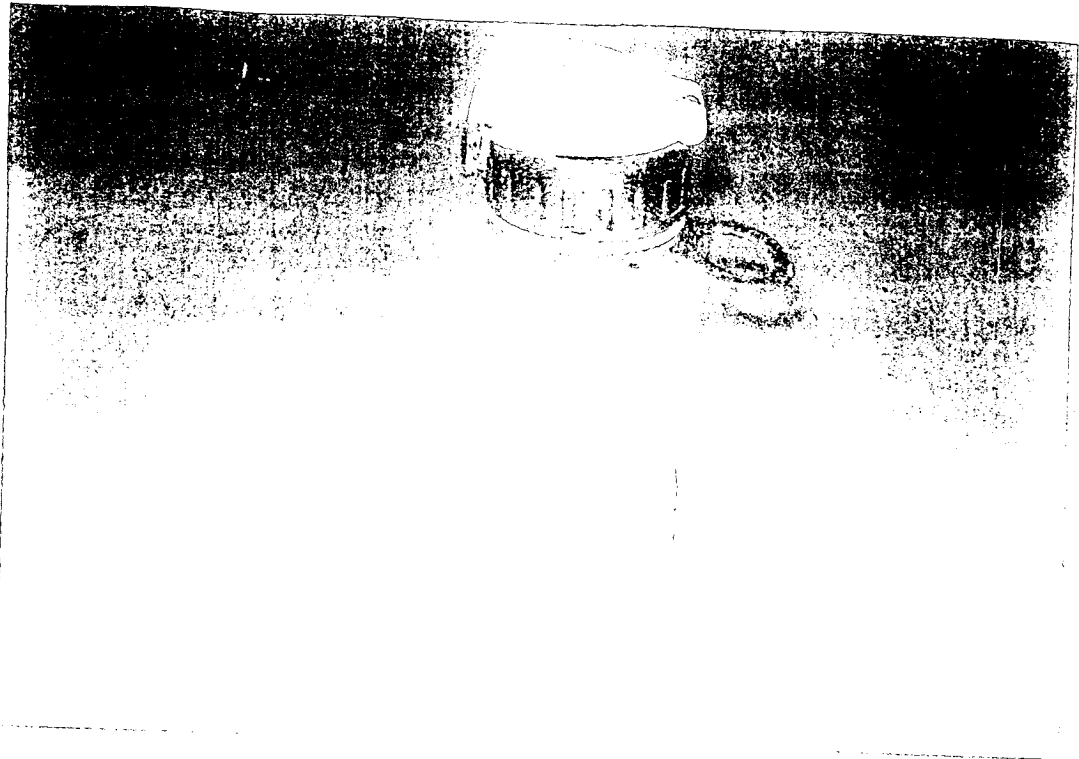
TriForest Ent v. Nalgene
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Applicant Nalge Nunc Int'l Inc Exhibit 42-3



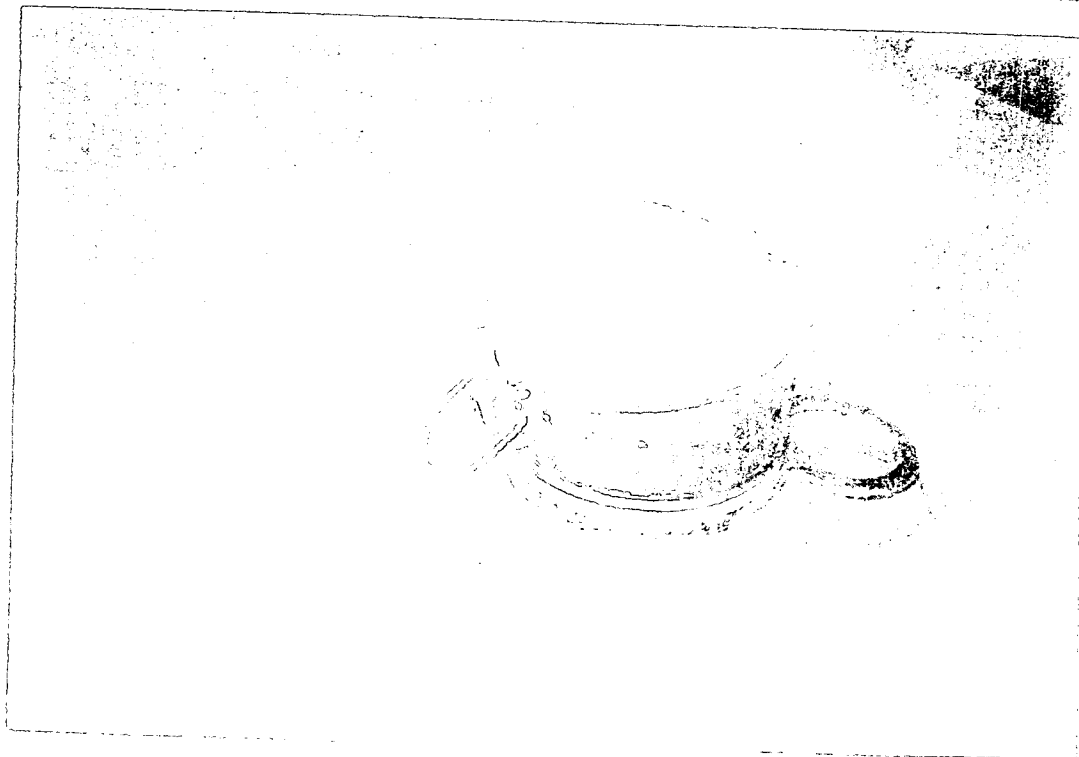
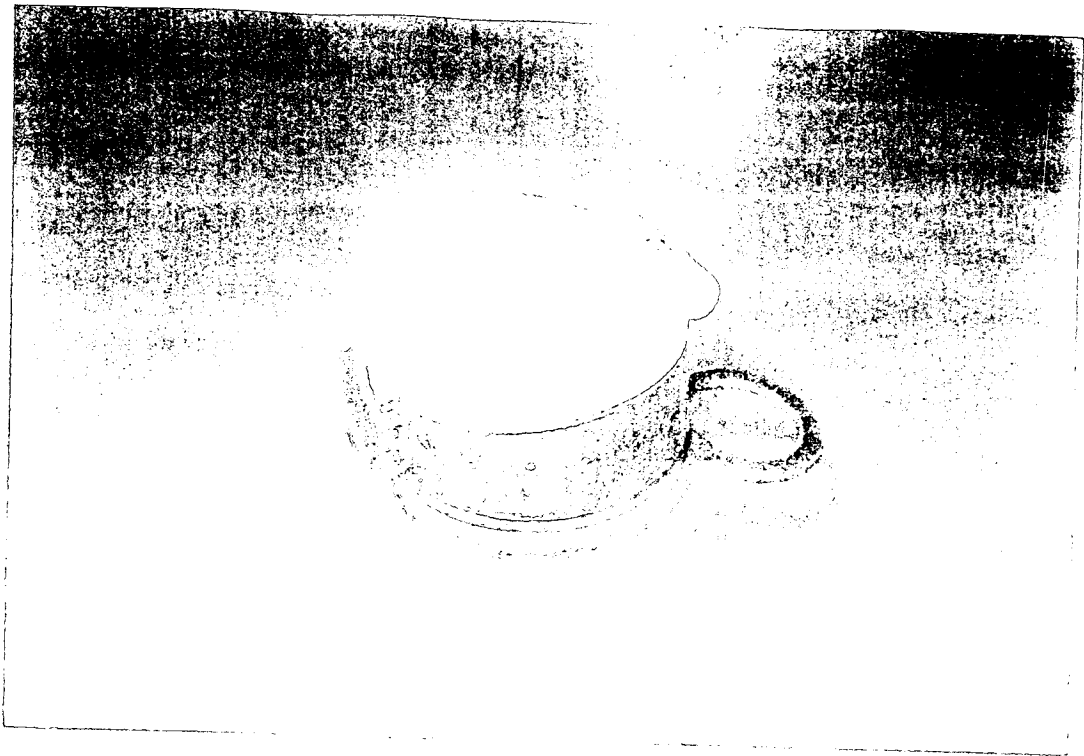
TriForest Ent v. Nalgene
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Applicant Nalgene Nunc Int'l Inc Exhibit 43-1



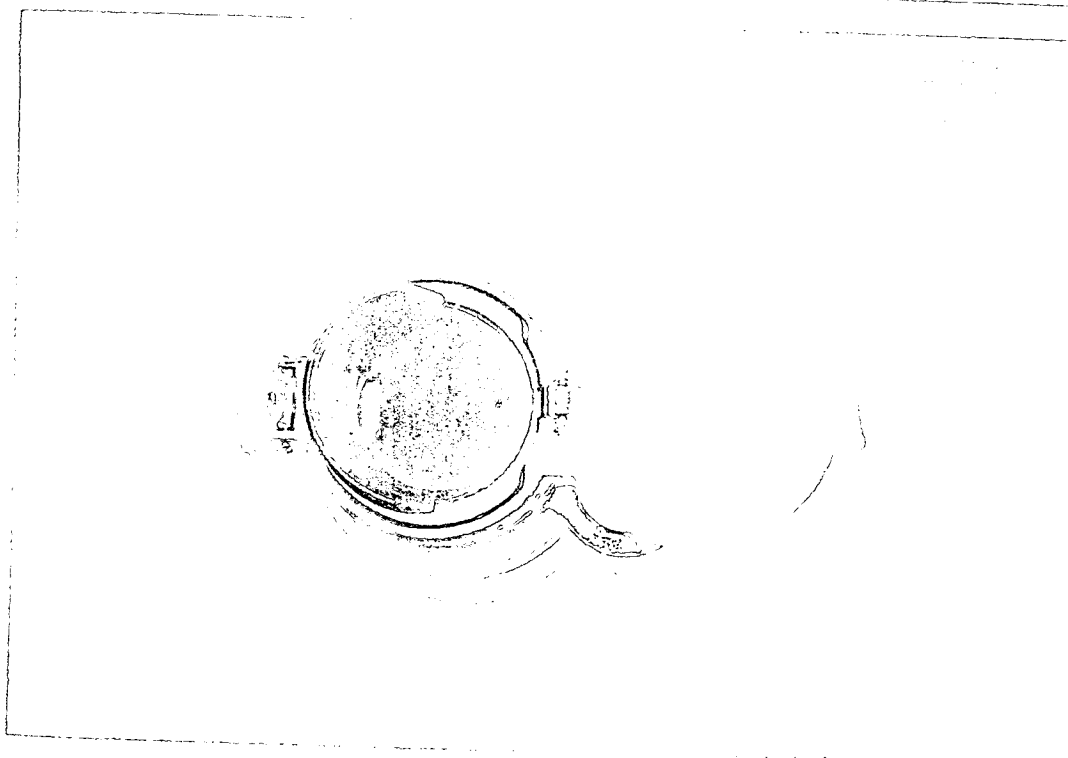
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Applicant Nalge Nunc Int'l Inc Exhibit 43 - 2



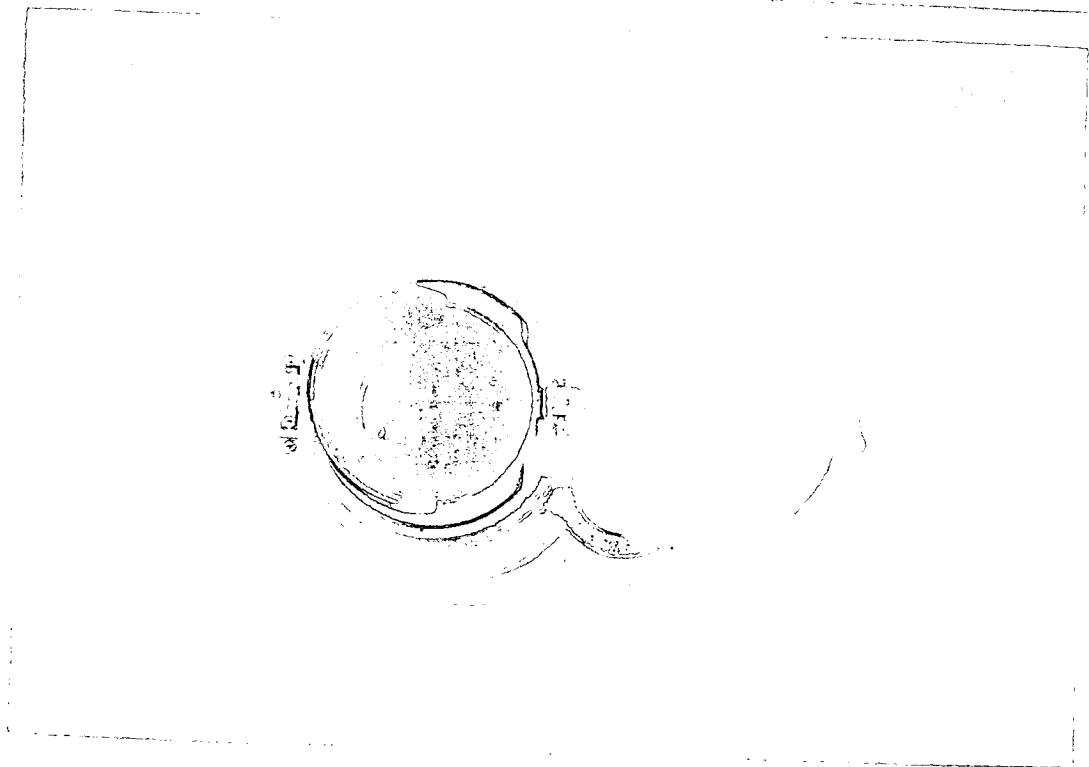
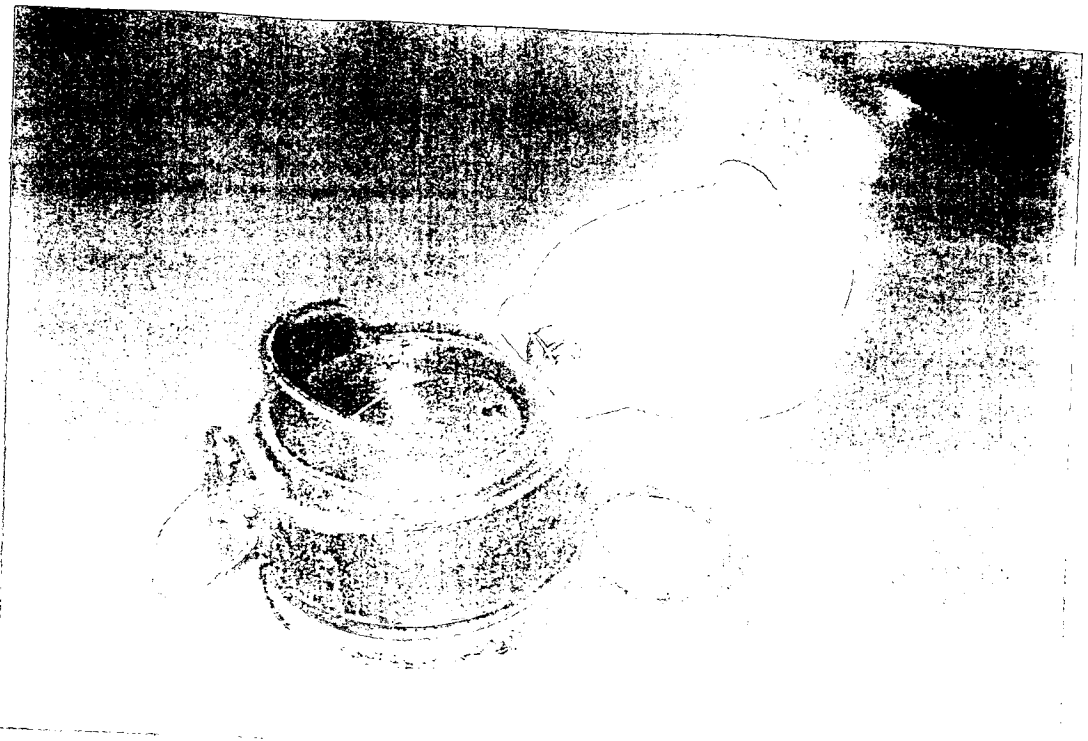
TriForest Ent v. Nalgene
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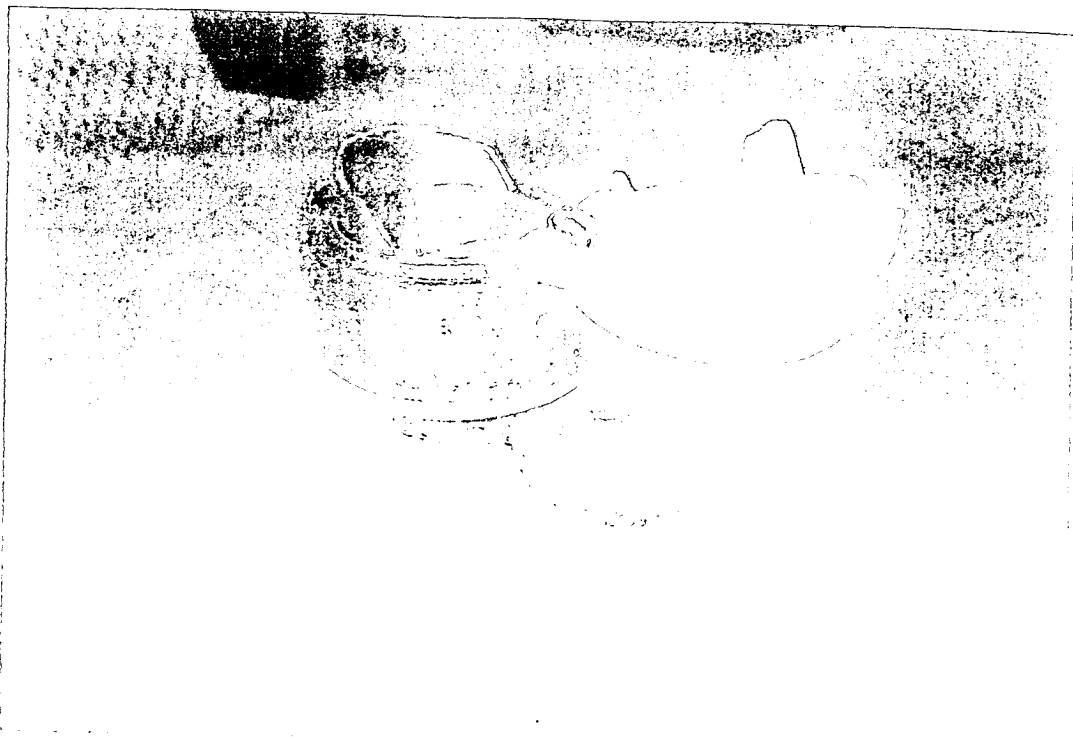
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Serial No. 76/572,253
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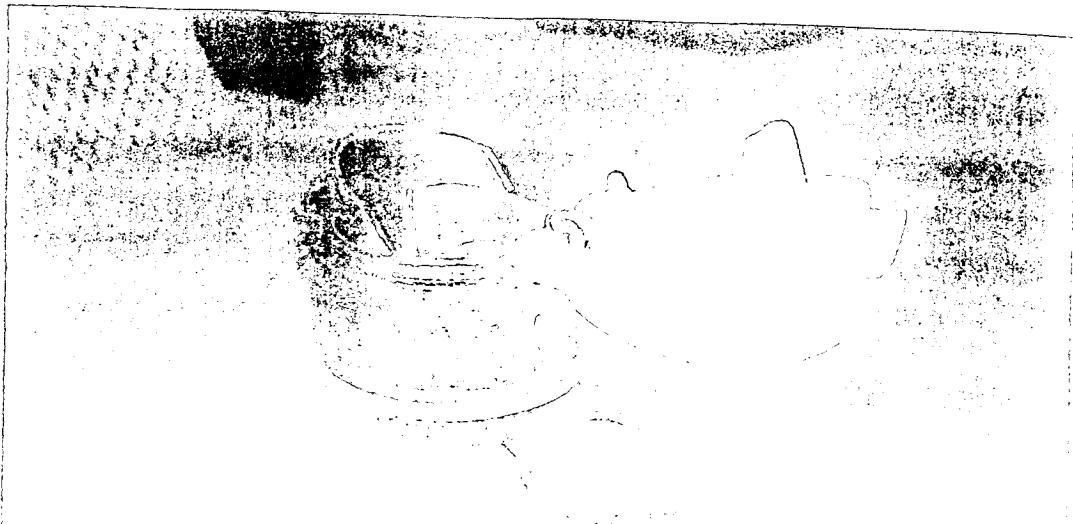
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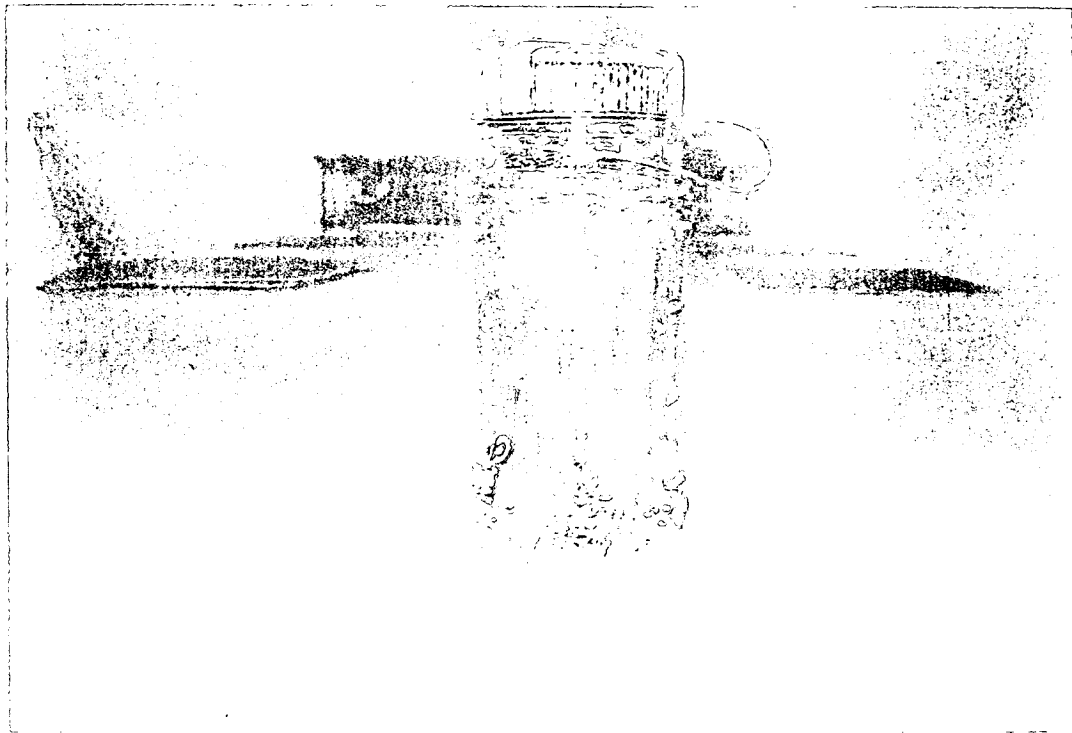
TriForest Ent v. Nalgene
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Applicant Nalgene Nunc Ent'l Inc Exhibit 44-3



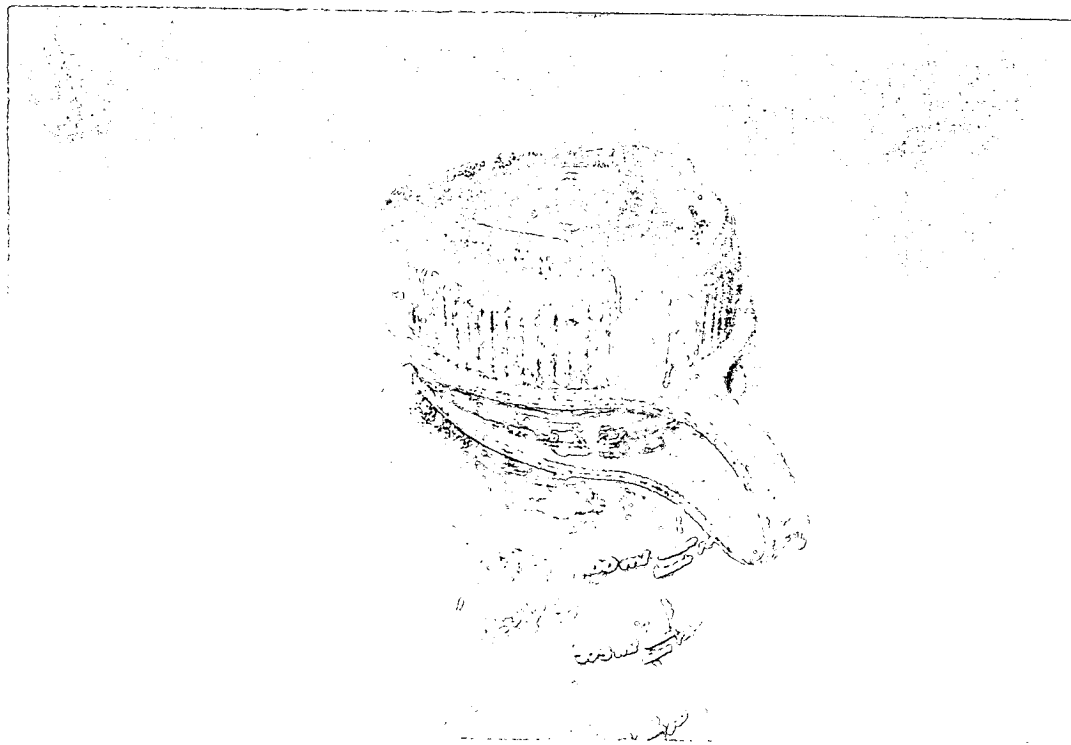
TriForest Ent v. Nalgene
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Applicant Nalge Nunc Int'l Inc Exhibit 44-4



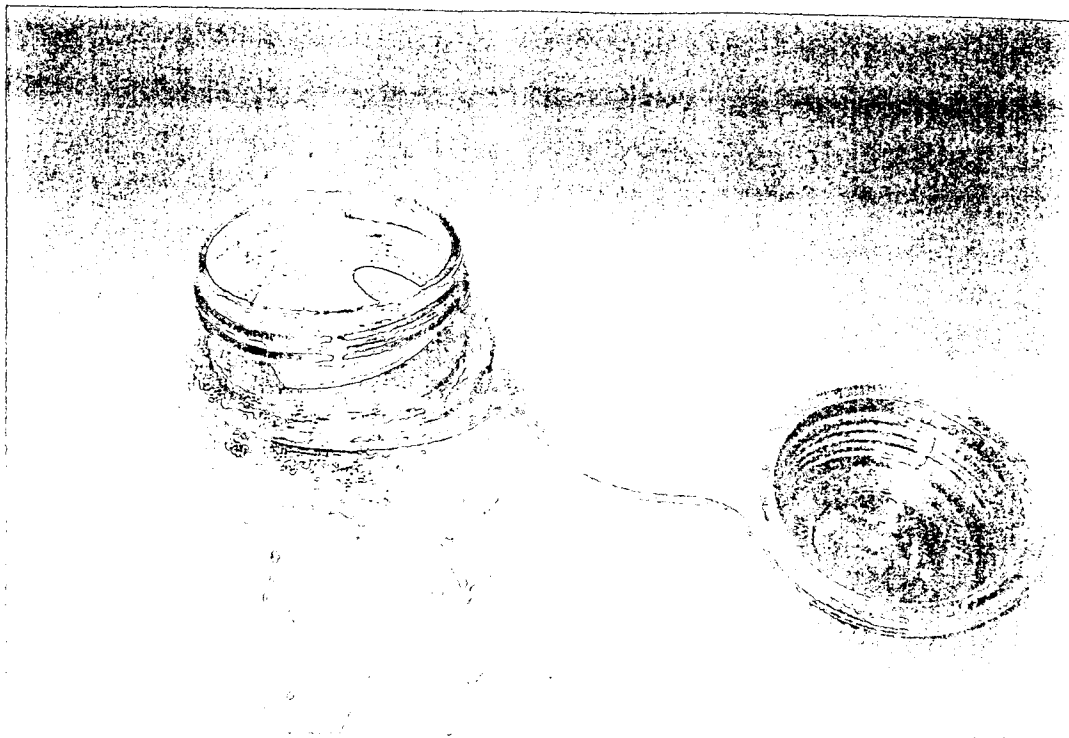
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